

## INDIAN CONSTITUTION

### UNIT I: (5 hours)

Introduction-Constitution meaning of the term, constitutional history, Features: Citizenship, Preamble, Fundamental Rights and duties, Directive Principles of State Policy.

### UNIT II: (5 hours)

Union Government and its Administration-Structure of the Indian Union: Federalism, centre-state relationship, President: Role, power and position, PM and Council of ministers, Cabinet and Central Secretariat, Lok sabha, Rajya sabha.

### UNIT III: (5 hours)

Election commission- Election commission: Role and functioning, Chief Election Commissioner and Election Commissioners, State Election Commission: Role and functioning, Institute and Bodies for the welfare of SC/ST/OBC and women.

### UNIT IV: (3 hours)

State Government and its Administration- Governor: Role and position, CM and Council of ministers, state secretariat: Organization, structure and functions.

### UNIT V: (7 hours)

Local Administration-District's Administration importance, head Municipalities: Introduction, Mayor and role of Elected Representatives, CEO of Municipal Corporation, Panchayati raj: Introduction, PRI: Zilla Panchayat, Elected officials and their roles, CEO Zilla Panchayat: Position and role, Block level: Organizational Hierarchy (different departments), Village level: Role of elected and appointed officials, Importance of grass root democracy.

### UNIT VI: (5 hours)

Union Judiciary-Establishment and constitution of Supreme court, Appointment of Judges, Establishment of State High court, Establishment of common High court for 2 or more states, WRITS, PIL(Public Interest Litigation).

#### Text book:

1. Durga Das Basu, *Constitutions of India*, 23<sup>rd</sup> ed, LexisNexis Publication.

#### Reference Books:

1. 'Indian Polity' by Laxmikanth
2. 'Indian Administration' by Subhash Kashy
4. 'Indian Administration' by Avasti and Av
5. 'Government and Politics of India' by W. 6. 'Constitution of India' by J.C.Johari

UNIT-1

INTRODUCTION TO CONSTITUTION

**What is a Constitution?**

Broadly speaking, it is a set of rules, written and unwritten, that seeks to establish the duties, powers and functions of the various institutions of government, regulate the relationships between them and define the relationships between the state and the individual.

**Meaning of Constitution:**

A body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed.

A Constitution may be written or unwritten, but it contains fundamental laws of the land. It is the supreme and ultimate authority. A Constitution also lays down limits on the power of the government to avoid abuse of authority.

Constitution is used in various contexts such as the Constitution of a State or a Nation, Constitution of an Association or Union, Constitution of a Sports Club, Constitution of a non-governmental organization (NGO) and Constitution of a company and so on.

**The Indian Constitution**

The Indian Constitution is the longest of all the written constitutions. It was prepared by a representative body, known as the **Constituent Assembly**. Most of its members were deeply involved in the freedom struggle. They are respectfully called the founding fathers of the Constitution. As originally adopted, Constitution had **22 Parts, 395 Articles and 8 Schedules**.

The Indian Constitution originally titled as **Bharatiya Samvidhana**. The Constitution came into effect on **26 January 1950** and since then we celebrate this day as the **Republic Day** every year.

**Constitution defines India as a sovereign, democratic, socialist and secular republic. It has provisions for bringing about social change and defining the relationship between individual citizens and the state.**

**Sovereign** - means absolutely independent; it is not under the control of any other state.

**Socialist** - Word 'Socialist' was added in the Preamble by 42nd Amendment of the Constitution which was passed in 1976. This implies a system which will Endeavour to avoid concentration of wealth in a few hands and will assure its equitable distribution.

**Secular** - The word 'Secular', like Socialist, was also added in the Preamble by 42nd Amendment of the Constitution. There is no state religion in India. Every citizen is free to follow and practice the religion of his/her own choice. The state cannot discriminate among its citizens on the basis of religion.

**Democratic** – It means that the power of the government is vested in the hands of the people. All the citizens enjoy equal political rights.

**Republic** – It means that the head of the State is not a hereditary monarch but a President who is indirectly elected by the people for a definite period.

### **Framing of the Constitution**

1. The Constitution of India was framed by a constituent Assembly set up under the Cabinet Mission Plan of 1946.
2. The Assembly consisted of 389 members representing provinces (292), states (93) the Chief Commissioner Provinces (3) and Baluchistan (1)
3. The Assembly held its first meeting on December 9, 1946, and elected Dr. Sachhidannand Sinha, the oldest member of the Assembly as the Provisional President.
4. On December 11, 1946 the Assembly elected Dr. B. Rajendra Prasad as its permanent Chairman.
5. The strength of the Assembly was reduced to 299 (229 representing the provinces and 70 representing the States) following withdrawal of the Muslim league members after the partition of the country.
6. The Constituent Assembly set up 13 Committees for framing the constitution. On the basis of the reports of these committees, a draft of the constitution was prepared by a seven member. Drafting Committee under the Chairmanship of Dr. B.R. Ambetkar.
7. The draft constitution was published in January, 1948 and people were given eight months to discuss the draft and propose amendments. After the draft was discussed by the people, the press, the provincial assemblies and the constituent Assembly in the light of the suggestions received, the same was finally adopted on November 26, 1949 and was signed by the President of the Assembly.

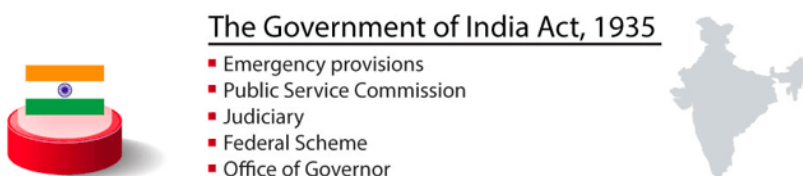
### **Indian constitution sources and constitutional history**

Indian Constitution is an essential and fundamental document that forms the basis of the **Republic of India**. It is the origin of the state, the government, citizenship, rights, liberty

& justice. Regardless of criticism, the Constitution, because of its borrowed character, is like a bouquet with the best flowers picked up from different gardens. Different legal systems have evolved differently, giving rise to various legal principles as the fruit of evolution. The borrowings have been justified and well-defended by the constitution makers. As is widely quoted, **Dr. B.R. Ambedkar** said the following: “Nobody holds any patent rights in the fundamental ideas of the Constitution.” Thus, borrowing provisions have helped the Constitution to build upon the collective learning of the humankind.

Let us check the provisions which have been sourced from different legal systems:

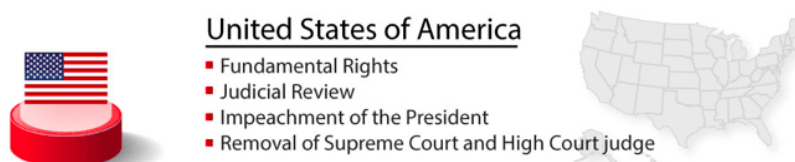
**i. The Government of India Act of 1935:** This was an Act passed by the Parliament of Britain. It provided a framework for the government of India and was passed in the response to demands of the Indian leaders for democracy.



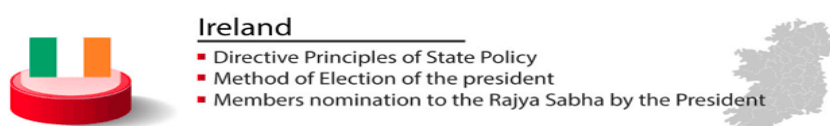
**ii. British Constitution:** Parliamentary system, Rule of Law (Article 14), Legislative procedure, Single citizenship, Cabinet System, System Writs, the rule of law



**iii. US Constitution:** Fundamental Rights (Part III), Post of Vice President, Judicial Review, Impeachment of the President, Removal of judges of Supreme Court and High Court (Article 124).



**iv. Irish Constitution:** Directive Principles of State Policy (Part IV), the nomination of members to Rajya Sabha, and method of election of President.



**v. Canadian Constitution:** It is exciting that the same parliament (British) Which passed the Government of India Act 1935, made constitutional laws for Canada. Thus, borrowing from Canada means taking something from English Case law.



### Canada

- Federalism with strong central government
- Advisory jurisdiction of the Supreme Court
- Centre appoints the Governors of the states
- Residuary powers vest with the centre



**vi. Australian Constitution:** Freedom of trade and commerce, Concurrent List, joint sitting of the two Houses of Parliament.



### Australia

- Concurrent List
- Freedom of trade and commerce
- Joint sitting of the two Houses of Parliament



**vii. Weimar Constitution (Constitution of Germany):** Suspension of Fundamental Rights during Emergency.



### Germany (Weimar Constitution)

- Suspension of Fundamental Rights during Emergency



**viii. Soviet Constitution:** The Soviet Constitution is known for its socialism. India, being a welfare state, did borrow the principles like Fundamental duties and the ideals of social, economic and political justice (Found in the Preamble).



### Soviet Union (USSR)

- Fundamental Duties
- The ideals of social, economic and political Justice



**ix. French Constitution:** Republic character of Constitution. The ideals of liberty, equality and fraternity in the Preamble.



### France

- The ideals of Liberty, Equality, Fraternity and Republic



**x. South African Constitution:** Procedure for amendment, the Constitution and election of the members of Rajya Sabha.



#### South Africa

- Amendment of the Constitution
- Election of members of the Rajya Sabha



**xi. Japanese Constitution:** Procedure established by law.



#### Japan

- Procedure established by law



This, the above mentioned provisions, is those which have been sourced from a foreign legal system. These borrowed provisions are very basic provisions or the procedural provisions.

**Citizenship:** Citizenship at the commencement of the Constitution. Every person who has his domicile in the territory of India.

**Article 5:** It provided for citizenship on commencement of the Constitution.

All those domiciled and born in India were given citizenship.

- Even those who were domiciled but not born in India, but either of whose parent was born in India, were considered citizens.
- Anyone who had been an ordinary resident for more than five years, too, was entitled to apply for citizenship.

**Article 6:** It provided rights of citizenship of certain persons who have migrated to India from Pakistan.

- Since Independence was preceded by Partition and migration, Article 6 laid down that anyone who migrated to India before July 19, 1949, would automatically become an Indian citizen if either of his parents or grandparents was born in India.
- But those who entered India after this date needed to register themselves.

**Article 7:** Provided Rights of citizenship of certain migrants to Pakistan.

- Those who had migrated to Pakistan after March 1, 1947 but subsequently returned on resettlement permits were included within the citizenship net.
- The law was more sympathetic to those who migrated from Pakistan and called them refugees than to those who, in a state of confusion, were stranded in Pakistan or went there but decided to return soon.

**Article 8:** Provided Rights of citizenship of certain persons of Indian origin residing outside India.

- Any Person of Indian Origin residing outside India who, or either of whose parents or grandparents, was born in India could register himself or herself as an Indian citizen

with Indian Diplomatic Mission.

**Article 9:** Provided that if any person voluntarily acquired the citizenship of a foreign State will no longer be a citizen of India.

**Article 10:** It says that every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

**Article 11:** It empowers Parliament to make any provision with respect to the acquisition and termination of citizenship and all matters relating to it.

**Citizenship (Amendment) Bill 2019:** The amendment proposes to permit members of six communities-- Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Pakistan, Bangladesh and Afghanistan to continue to live in India, if they entered India before December 14, 2014.

- It also reduces the requirement for citizenship from 11 years to just 6 years.
- Two notifications also exempted these migrants from the Passport Act and Foreigners Act.
- The justification given for the bill is that Hindus and Buddhists are minorities in Bangladesh.

#### Section 6A

- The section was made applicable only to Assam.
- It lay down that all persons of Indian origin who entered Assam before January 1, 1966 and have been ordinary residents will be deemed Indian citizens.
- Those who came after 1 January, 1966 but before March 25, 1971, and have been ordinary residents, will get citizenship at the expiry of 10 years from their detection as a foreigner.
- A five judge Bench of the Supreme Court is yet to examine the constitutionality of Section 6A under which the current NRC has been prepared.

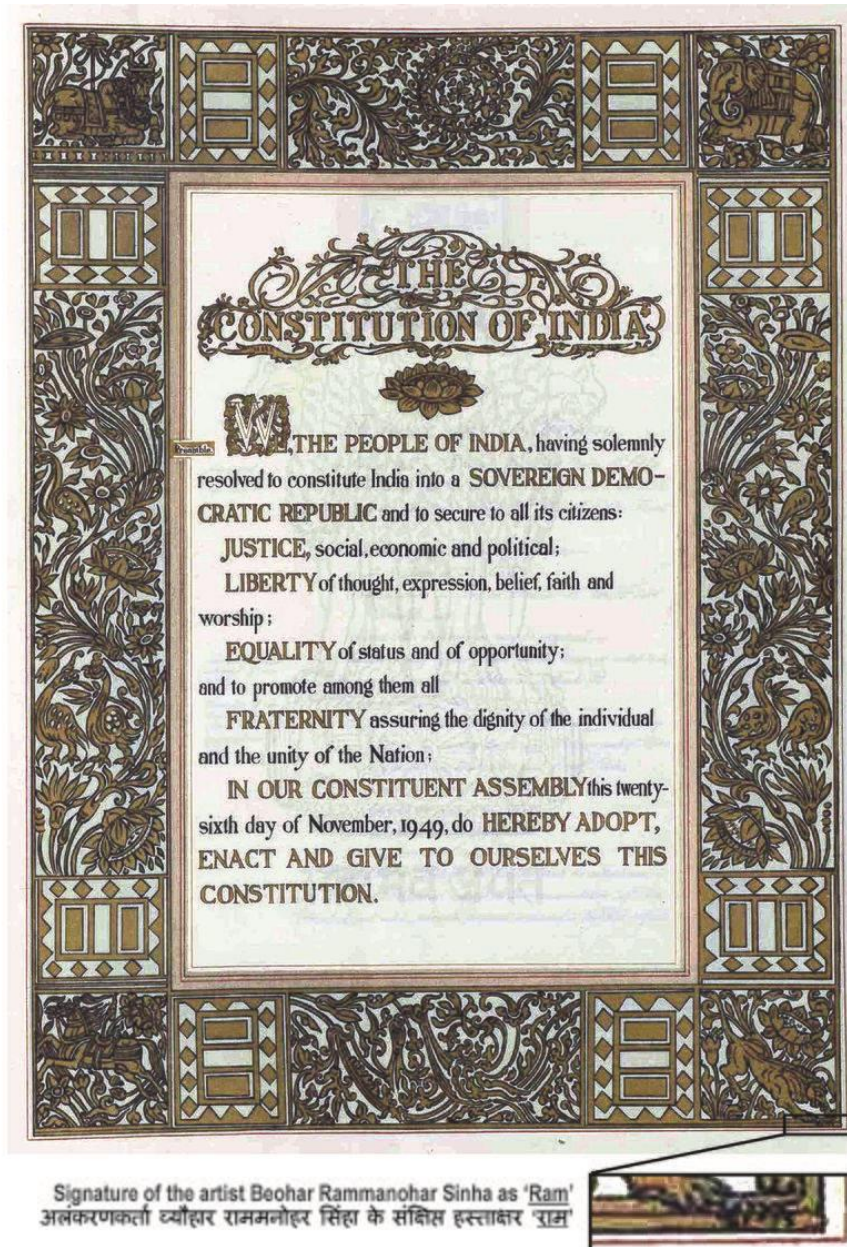
#### What is a Preamble?

A preamble is an introductory statement in a document that explains the document's philosophy and objectives. In a Constitution, it presents the intention of its framers, the history behind its creation, and the core values and principles of the nation.

The preamble basically gives idea of the following things/objects:

1. Nature of Indian State
2. Statement of its objectives
3. Date of its adoption





### Components of Preamble

- It is indicated by the Preamble that the source of authority of the Constitution lies with the people of India.
- Preamble declares India to be a sovereign, socialist, secular and democratic republic.
- The objectives stated by the Preamble are to secure justice, liberty, equality to all citizens and promote fraternity to maintain unity and integrity of the nation.
- The date is mentioned in the preamble when it was adopted i.e. November 26, 1949.

### Key words in the Preamble



- **We, the people of India:** It indicates the ultimate sovereignty of the people of India. Sovereignty means the independent authority of the State, not being subject to the control of any other State or external power.
- **Sovereign:** The term means that India has its own independent authority and it is not a dominion of any other external power. In the country, the legislature has the power to make laws which are subject to certain limitations.
- **Socialist:** The term means the achievement of socialist ends through democratic means. It holds faith in a mixed economy where both private and public sectors coexist side by side.
  - It was added in the Preamble by 42<sup>nd</sup> Amendment, 1976.
- **Secular:** The term means that all the religions in India get equal respect, protection and support from the state.
  - It was incorporated in the Preamble by 42<sup>nd</sup> Constitutional Amendment, 1976.
- **Democratic:** The term implies that the Constitution of India has an established form of Constitution which gets its authority from the will of the people expressed in an election.
- **Republic:** The term indicates that the head of the state is elected by the people. In India, the President of India is the elected head of the state.

### Objectives of the Indian Constitution

The Constitution is the supreme law and it helps to maintain integrity in the society and to promote unity among the citizens to build a great nation. The main objective of the Indian Constitution is to promote harmony throughout the nation. The factors which help in achieving this objective are:

- **Justice:** It is necessary to maintain order in society that is promised through various provisions of Fundamental Rights and Directive Principles of State Policy provided by the Constitution of India. It comprises three elements, which are social, economic, and political.
- ✚ **Social Justice** – Social justice means that the Constitution wants to create a society without discrimination on any grounds like caste, creed, gender, religion, etc.
- ✚ **Economic Justice** – Economic Justice means no discrimination can be caused by people on the basis of their wealth, income, and economic status. Every person must be paid equally for an equal position and all people must get opportunities to earn for their living.

✚ **Political Justice** – Political Justice means all the people have an equal, free and fair right without any discrimination to participate in political opportunities.

- **Equality:** The term ‘Equality’ means no section of society has any special privileges and all the people have given equal opportunities for everything without any discrimination. Everyone is equal before the law.
- **Liberty:** The term ‘Liberty’ means freedom for the people to choose their way of life, have political views and behaviour in society. Liberty does not mean freedom to do anything, a person can do anything but in the limit set by the law.
- **Fraternity:** The term ‘Fraternity’ means a feeling of brotherhood and an emotional attachment with the country and all the people. Fraternity helps to promote dignity and unity in the nation.

**Amendment of the Preamble:** 42<sup>nd</sup> Amendment Act, 1976: After the judgment of the Kesavanand Bharati case, it was accepted that the preamble is part of the Constitution.

- As a part of the Constitution, preamble can be amended under Article 368 of the Constitution, but the basic structure of the preamble cannot be amended.
- Because the structure of the Constitution is based on the basic elements of the Preamble. As of now, the preamble is only amended once through the 42<sup>nd</sup> Amendment Act, 1976.
- The term ‘Socialist’, ‘Secular’, and ‘Integrity’ were added to the preamble through 42<sup>nd</sup> Amendment Act, 1976.
  - ❖ ‘Socialist’ and ‘Secular’ were added between ‘Sovereign’ and ‘Democratic’.
  - ❖ ‘Unity of the Nation’ was changed to ‘Unity and Integrity of the Nation’.

### **Fundamental Rights**

Fundamental rights are the basic human rights enshrined in the Constitution of India which are guaranteed to all citizens. They are applied without discrimination on the basis of race, religion, gender, etc. Significantly, fundamental rights are enforceable by the courts, subject to certain conditions.

Why are they called Fundamental Rights?

These rights are called fundamental rights because of two reasons:

1. They are enshrined in the Constitution which guarantees them
2. They are justiciable (enforceable by courts). In case of a violation, a person can approach a court of law.

## List of Fundamental Rights

There are six fundamental rights of Indian Constitution along with the constitutional articles related to them are mentioned below:

1. Right to Equality (Article 14-18)
2. Right to Freedom (Article 19-22)
3. Right against Exploitation (Article 23-24)
4. Right to Freedom of Religion (Article 25-28)
5. Cultural and Educational Rights (Article 29-30)
6. Right to Constitutional Remedies (Article 32)

### Why Right to Property is not a Fundamental Right?

There was one more fundamental right in the Constitution, i.e., the right to property.

However, this right was removed from the list of fundamental rights by the **44th** Constitutional Amendment.

This was because this right proved to be a hindrance towards attaining the goal of socialism and redistributing wealth (property) equitably among the people.

Note: The right to property is now a legal right and not a fundamental right.

### 1. Right to Equality (Articles 14 – 18)

Right to equality guarantees equal rights for everyone, irrespective of religion, gender, caste, race or place of birth. It ensures equal employment opportunities in the government and insures against discrimination by the State in matters of employment on the basis of caste, religion, etc.

### 2. Right to Freedom (Articles 19 – 22)

Freedom is one of the most important ideals cherished by any democratic society. The Indian Constitution guarantees freedom to citizens. The freedom right includes many rights such as:

- Freedom of speech
- Freedom of expression
- Freedom of assembly without arms
- Freedom of association
- Freedom to practise any profession
- Freedom to reside in any part of the country

### 3. Right against Exploitation (Articles 23 – 24)

This right implies the prohibition of traffic in human beings, beggar, and other forms of forced labour. It also implies the prohibition of children in factories, etc. The Constitution prohibits the employment of children less than 14 years in hazardous conditions.

#### **4. Right to Freedom of Religion (Articles 25 – 28)**

This indicates the secular nature of Indian polity. There is equal respect given to all religions. There is freedom of conscience, profession, practice and propagation of religion. The State has no official religion. Every person has the right to freely practice his or her faith, establish and maintain religious and charitable institutions.

#### **5. Cultural and Educational Rights (Articles 29 – 30)**

These rights protect the rights of religious, cultural and linguistic minorities, by facilitating them to preserve their heritage and culture. Educational rights are for ensuring education for everyone without any discrimination.

#### **6. Right to Constitutional Remedies (32 – 35)**

The Constitution guarantees remedies if citizens fundamental rights are violated. The government cannot infringe upon or curb anyone's rights. When these rights are violated, the aggrieved party can approach the courts. Citizens can even go directly to the Supreme Court which can issue writs for enforcing fundamental rights.

#### **Features of Fundamental Rights**

- Fundamental rights are different from ordinary legal rights in the manner in which they are enforced. If a legal right is violated, the aggrieved person cannot directly approach the Supreme Court bypassing the lower courts. He or she should first approach the lower courts.
- Some of the fundamental rights are available to all citizens.
- Fundamental rights are not absolute rights. They have reasonable restrictions, which mean they are subject to the conditions of state security, public morality and decency and friendly relations with foreign countries.
- Fundamental rights can be amended by the Parliament by a constitutional amendment but only if the amendment does not alter the basic structure of the Constitution.
- Fundamental rights can be suspended during a national emergency. But, the rights guaranteed under Articles 20 and 21 cannot be suspended.

**Fundamental Duties in India:** The fundamental duties which were added by the 42nd Amendment Act of the Constitution in 1976, in addition to creating and promoting culture, also strengthen the hands of the legislature in enforcing these duties with regard to the

fundamental rights. Fundamental duties are not enforceable by law. The list of 11 Fundamental Duties under article 51-A to be obeyed by every Indian citizen is given below:

- i. to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- ii. to cherish and follow the noble ideals which inspired our national struggle for freedom;
- iii. to uphold and protect the sovereignty, unity and integrity of India;
- iv. to defend the country and render national service when called upon to do so;
- v. to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- vi. to value and preserve the rich heritage of our composite culture;
- vii. to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- viii. to develop the scientific temper, humanism and the spirit of inquiry and reform;
- ix. to safeguard public property and to abjure violence;
- x. to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of Endeavour and achievement;
- xi. Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years. By the Constitution Eighty-sixth (86) Amendment Act, 2002.

### **Importance of Fundamental Duties:**

- They remind Indian Citizens of their duty towards their society, fellow citizens and the nation
- They warn citizens against anti-national and anti-social activities
- They inspire citizens & promote a sense of discipline and commitment among them
- They help the courts in examining and determining the constitutional validity of a law
- They are enforceable by law



## Directive Principles of State Policy:

Part IV of the Indian Constitution consists of all the DPSP (Directive Principles of State Policy). It covers the Articles from 36 to 51.

### Sources

- The DPSP of the Indian Constitution was inspired by the Irish Constitution which took these details from Spain.
- Some Instruments of Instructions, which also became the immediate source of DPSP, have been taken from the Government of India Act, 1935.

### List of Directive Principles of State Policy

Article	What it says
36	Defines the “state”.
37	Part IV of the Indian Constitution shall not be enforceable in any court of law.
38	Social, Political and Economic Justice.
39	Principles of Policy.
39A	Free Legal aid.
40	Organization of Panchayats.
41	Welfare Government.
42	Securing just and humane work and maternity relief.
43	Fair wages and a decent standard of life.
43-A	Workers’ participation in management.
43-B	Promotion of Cooperatives.
44	Uniform Civil Code.
45	Infant and Child Care.
46	Protection of SCs, STs and other weaker sections from exploitation.
47	Nutrition, Standard of living and public health.
48	Scientific agriculture and animal husbandry.
48-A	Environment and Wildlife Protection.
49	Protection of monuments and places and objects which have national importance.
50	Judiciary should be separate from the Executive.
51	The state shall promote international peace and security.

**Article 36: Article 36 contains the definition of State.**

- ✚ Unless the context otherwise requires, the definition of “the State” is the same as it is given in Part III which covers Fundamental Rights.
- ✚ The definition given in Article 12 shall apply in this part as well which says that the State includes:
  - The Government of India and The Parliament of India
  - The Government of each of the States and The Legislature of each of the States
  - All the authorities whether local or any other which are the part of Indian Territory or under the control of the government.

**Article 37: Article 37 mentions the two important characteristics of DPSP.**

- It is not enforceable in any court of Law. And they are very basic and essential for the governance of the country.

**Article 38: Article 38 talks about Social, Political and Economic Justice.**

- It directs that the State should secure a social order which provides social, political and economic justice to all its citizens.
- Article 38(2) says that state shall reduce the inequalities faced by the people on the grounds like income, status, facilities, opportunities, etc.

**Article 39: Article 39 mentions all the Principles of policy which must be followed by the State.**

The State shall make its policies towards securing the following objectives—

- All the men, women and citizens should have the right to an adequate means of livelihood
- The ownership and control of the people over any material resources under the community should be distributed as it is for the common good of the public;
- There shall be no gender discrimination; both men and women should get equal pay for equal work.
- Children must be given enough opportunities and facilities so that they develop in a healthy manner.

**Article 39A: Article 39 A talks about Free Legal aid.**

- It says that the State shall promote justice with the aim of administering Justice on the basis of equal opportunity, and shall provide free legal aid through any suitable legislation or schemes which State may think fit.

**Article 40: Article 40 deals with the Organization of Panchayats.**

- It says that the state shall organize Panchayat system and should grant them such powers which would be necessary for the functioning as units of the self-government system.
- The 73rd and 74th amendments of the constitution which are related to Panchayati Raj and Municipal Corporations respectively, later ended up as the constitutionally backed framework for the principle mentioned in Part IV.

**Article 41:** Article 41 talks about Welfare Government.

- It says that state shall make some effective provisions for securing the right to work, etc. and in cases of unemployment, old age, disablement or any other cases acting in its economic capacity & development it shall provide public assistance. This article is employed as a tenet for numerous social sector schemes like social assistance program, right to food security, old-age pension scheme, MGNREGA, etc.

**Article 42:** Article 42 talks about Securing just and humane work and maternity relief.

- It says that state shall create some provisions so that the citizens get easy, just and humane conditions for working. It shall also provide maternity relief for the women.

**Article 43:** Article 43 talks about Fair wages and a decent standard of life.

- It says that the state can endeavour to secure by appropriate legislation or economic organization to all the workers employed in agricultural, industrial or otherwise, work, a living wage, conditions of work, ensuring a decent standard of life and enjoyment of leisure and social-cultural opportunities and promote cottage industries on an individual or cooperative basis in rural and remote areas of the country.

**Article 43A:** The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations.

**Article 43B :** Article 43 B deals with the promotion of cooperatives.

- It was inserted by the 97th amendment act in 2011. It says that state shall endeavour to promote the management of the cooperative societies to help the people who are engaged in the same.

**Article 44:**Article 44 talks about the Uniform Civil Code.

- There should be a provision for the citizens to secure a Uniform Civil Code throughout the territory of India in order to simplify things and reduce ambiguity in the laws which makes it more complex than it actually is.

**Article 45:** Article 45 contains the Provision for free and compulsory education for the children in the country.

- The State shall make laws to provide free and compulsory education for the children until they are 14 years old within a period of 10 years from the date of commencement of this provision in the Constitution.
- This provision was incorporated by the virtue of the 86th Amendment, 2002 in the Constitution of India.

**Article 46:** Article 46 deals with the Protection of SCs, STs, and weaker sections from exploitation.

- The State shall promote with special care including the educational and economic interests of the weaker sections of the society i.e. the SCs and the STs and shall make provisions to protect them from all forms of exploitation which includes social injustice.

**Article 47:** Article 47 talks about Nutrition, Standard of living and public health.

- It says that the State shall look into the matter of raising the level of nutrition and the standard of living of its people and it is the duty of the State to keep a check on the improvement of public health.
- There are many social development programmes such as National Health Mission, Mid-Day Meal Scheme, etc. which target the marginalized sections of the society i.e women, children, weaker sections etc. are inspired by this DPSP.

**Article 48:** Article 48 talks about scientific agriculture and animal husbandry.

- It says that the State shall endeavour to organize agriculture and animal husbandry using modern methods and scientific techniques which make people more advanced and helps in earning their livelihood easily and State shall take some progressive steps for preserving and improving the existing breeds and prohibiting the slaughter of cows and other cattle.

**Article 48A:** Article 48 A talks about the Environment and Wildlife Protection.

The State shall endeavour to protect and improve the environment and surroundings. And to safeguard the forests and wildlife of the country to make the environment sustainable.

**Article 49:** Article 49 talks about Protection of monuments and places and objects of national importance.

- It shall be the duty of the State to protect every monument or place or any object of historic or artistic interest which has some national importance, from any form of disfigurement, destruction, etc.

**Article 50:** Article 50 talks about Separation of Judiciary from the Executive.

- There should be a line between the judiciary and the executive body of the Government in the public services of the State as it makes it easier if both do not interfere in each other's work and function independently.

**Article 51:** Article 51 talks about Promotion of international peace and security.

- Promote international peace and security; maintain friendly and honourable relations between nations;
- Foster respect for international law and treaty obligations in the dealings of one person with another for maintaining harmony between the nations and encourage settlement of international disputes by the method of arbitration.

**UNIT-II**

**Union Government and its Administration**

**Federalism in India**

Federalism in India refers to relations between the Centre and the States of the Union of India. The Constitution of India establishes the structure of the Indian government. Part XI of the Indian constitution specifies the distribution of legislative, administrative and executive powers between the union government and the States of India. The legislative powers are categorised under a Union List, a State List and a Concurrent List respectively, the powers conferred upon the Union government, those conferred upon the State governments and powers shared among them.

**Centre-State relation**

India is a union of states. The constitution of India has divided the legislative, executive and financial powers between the centre and the states, which gives the constitution a federal character whereas judiciary is integrated in a hierarchical structure.

The centre-state relations are divided into three parts, which are mentioned below:

- (A) Legislative Relations (Article 245-255)
- (B) Administrative Relations (Article 256-263)
- (C) Financial Relations (Article 268-293)

**Legislative Relations**

Articles 245 to 255 in Part XI deals with different aspects of legislative relations between centre and states. These include:

- (1) Territorial jurisdiction of laws made by the Parliament and by the Legislatures of States.
- (2) Distribution of legislative subjects
- (3) Power of parliament to legislate with respect to a matter in the State List
- (4) Centre's control state legislation

However, Seventh (7) Schedule of the Constitution provides for the distribution of legislative powers between the centre and the states. The legislative subjects are divided into List I (the Union List), List II (the Concurrent List) and List III (the State List).

- At present, there are 100 subjects in the Union list which includes subjects such as foreign affairs, defence, railway, postal services, banking, atomic energy, communication, currency etc.
- At present, there are 52 subjects in the concurrent list. The list includes subjects such as education, forests, protection of wild animals and birds, electricity, labour welfare,



criminal law and procedure, civil procedure, population control and family planning, drugs etc.

- At present, there are 61 subjects in the State list. The list includes subjects such as police, public order, roadways, health, agriculture, local government, drinking water facilities, sanitation etc.
- ❖ Article 245 empowers the centre to give directions to the states in certain cases in regards to the exercise of their executive powers.
- ❖ Article 249 empowers the parliament to legislate with respect to a matter in the State List in the national interest.
- ❖ Article 250, the parliament becomes empowered to make laws on the matters related to state list when national emergency (under Article 352) is in operation.
- ❖ Article 252, the parliament is empowered to legislate for two or more States by their consent.

**Administrative Relations:** Article 256 to 263 deals with the administrative relations between the centre and the states.

Article 256 states that "the executive power of every State shall be so exercised as to ensure compliance with the laws made by the parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose".

**Cooperation between the Centre and the States:** The constitution lays down various provisions to secure cooperation and coordination between the centre and the states. These include:

- (i) Article 261 states that "Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State".
- (ii) Article 262, the parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.
- (iii) Article 263 empowers the President to establish an inter-State Council to inquire into and advise upon disputes between states, to investigate and discuss subjects in which some or all of the States, or the Union and one or more of the States, have a common interest.
- (iv) Article 307, Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of the constitutional provisions related to the inter-state freedom of trade and commerce.

**Centre-State Relations during Emergency:**

- I. During a national emergency (under Article 352), the state government become subordinate to the central government. All the executive functions of the state come under the control of the union government.
- II. During a state emergency (under Article 356), the president can assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or authority in the State other than the Legislature of the State.
- III. During the operation of financial emergency (under Article 360), the Union may give directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

**Financial Relations:** The Constitution deals with the centre-state financial relations in Article 268-293 of Part XII. The Constitution has provided the union government and the state governments with the independent sources of revenue. It allocates the powers to centre and the states in the following way:

- (i) The parliament has exclusive power to levy taxes on the subjects mentioned in the Union List.
- (ii) The state legislatures has exclusive power to levy taxes on the subjects mentioned in the State List
- (iii) Both the parliament and the state legislature are empowered to levy taxes on the subjects mentioned in the Concurrent List.

**However, in case of tax revenue distribution,**

- Article 268 states that duties are levied by the Union but are collected and appropriated by the States;
- Service tax levied by Union and collected and appropriated by the Union and the States (Article 268-A);
- Taxes levied and collected by the Union but assigned to the States (Article 269);
- Taxes levied and collected by the Union but distributed between the Union and the States (Article 270).
- Surcharge on certain duties and taxes for purposes of the Union (Article 271)

**Establishment of an Inter-state council under Article 263**

1. Decentralization of powers to the states as much as possible

2. More transfer of financial resources to the states
  3. Advancement of loans to states should be related to as 'the productive principle'.
  4. Deployment of central armed forces in the states either on their request or otherwise.
- During state emergency, under Article 356, President's Rule can be imposed in event of the failure of constitutional machinery in a state.

**Structure of the Indian Union:** A **union** is things coming together, or uniting, to make one. **Part 1** of the Constitution is titled as The Union and its Territory. These parts come under articles from 1 to 4.

### **Union and Its Territory (Article 1 – 4)**

#### **Article 1:**

Article 1(1) state that India, that is Bharat, shall be a Union of States.

Article 1(2) states that the States and the territories will be specified in the First Schedule.

Article 1(3) states that the territory of India.

**Article-1** describes India as a 'Union of States'. Dr. B.R. Ambedkar said that the Indian federation was a "Union" because it was indissoluble, and no State had a right to separate from the Indian Union. The country is one integral unit beside the fact that it consists of different states for the convenience of administration.

The phrases 'Union of India' and 'Territory of India' has to be differentiated.

The Union of India includes only the States enjoying the Status of being members of the federal system and sharing the powers with the Union.




The territory of India includes not only the States but also the Union Territories and such other territories as may be acquired by India in future. First Schedule of the Constitution has specified states and the Territories both.

#### **Article – 2:**

It deals with admission or establishment of new States. Parliament may by law admit into the Union, or establish, new States based on terms and conditions.

#### **Article- 3:**

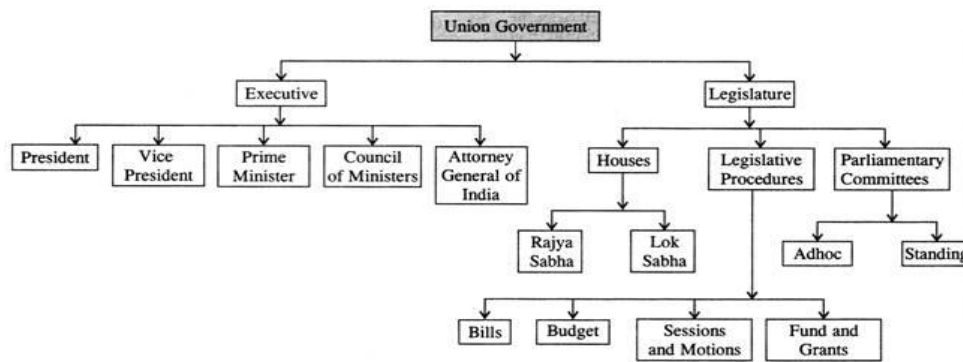
It states that the Parliament may by law form a new State by separation of a territory from any State or by uniting two or more States completely or in parts or by uniting any territory to a part of any State. It deals with the following:

-  Formation of new States
-  Alteration of areas of States
-  Boundaries or names of existing States

**Article-4:** It says that any law referred to in Article-2 or Article-3 will contain such provisions for the amendment of the I<sup>st</sup> Schedule and the IV<sup>th</sup> Schedule necessary to provide effects, to the provisions of law and may also contain such supplemental, incidental, and consequential provisions, as the Parliament may deem necessary.

The Government of India or the Central or the Union Government is divided into three main sections, namely the executive, Legislature and the judiciary.

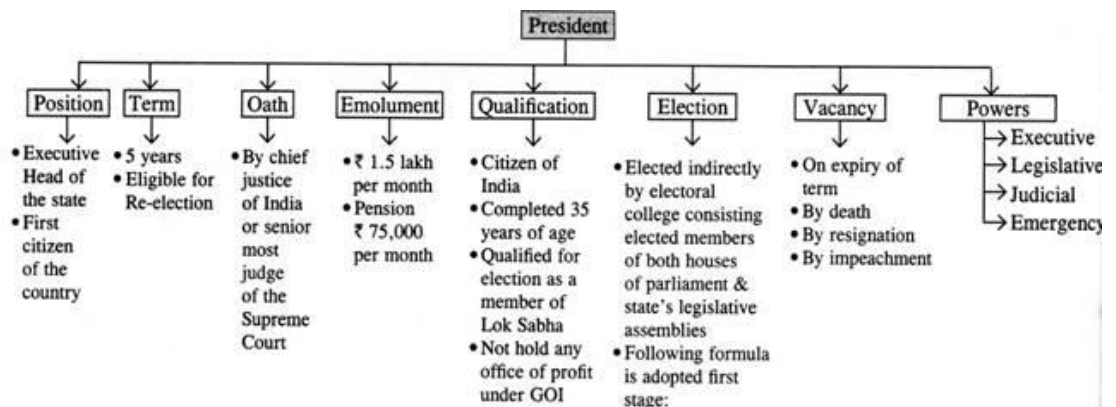
**The Union Government:** The Union Government was included PART V (Articles 52 to 151) deals with the Executive, Parliament (Legislature), Union Judiciary and the comptroller and Auditor General of India (CAG).



**Union Executive:** Articles 52 to 78 (Part V)

Union Executive in India consists of the President, Vice-President, Prime minister and his/her Council of ministers and the Attorney General of India.

## The President



**Article 52:** There shall be a President of India. He shall be the head of the state.

- **Article 53:** Executive powers of the Union shall be vested in the President, exercised by him either directly or through the officers' sub-ordinate to him, who give aid and advice to the President for the exercise of powers.

**Election of the President (Articles 54 & 55):** Article 54 provides that President shall be elected by an electoral college consisting of:-

(a) Elected members of both houses of parliament.

(b) Elected members of the legislative assemblies of the states.

Members of legislative councils (MLC) do not participate in presidential election. Nominated members of both the Houses at the Centre and the States do not have voting rights in the election of the President.

**Disputes on election of the President:** Article 71 provides that all disputes arising out of the election of President or Vice-President shall be 'inquired' into and 'decided' by the Supreme Court whose decision shall be final.

**Qualifications for the Office of President:** Under Article 58, he must be:

(a) Citizen of India

(b) Completed 35 years

(c) Qualified for election as a member of the Lok Sabha, i.e. he must be registered as a voter in a parliamentary constituency.

(d) Not hold any office of profit under GOI, or any state government or under any local or other authority subject to the control of the government.

- Under Article 59, the President cannot be a member of either house of parliament or any state legislature. If such a member is elected President, he shall be deemed to have vacated his seat in that house on the date which he enters the office of President.

- His emoluments, allowances and privileges are determined by the parliament by law. Salary and allowances cannot be diminished during his term of office. Monthly emoluments are Rs. 1.5 lakh and the pension is Rs. 75,000 per month.

- Oath or affirmation of President's office is administered by the Chief Justice of India (Article 60) or by the senior most judge of the Supreme Court.

- Term of office of President is 5 years from the date on which he/she enters upon his/her office. The president is eligible for re-election.

- Termination from office is possible before the term of 5 years ends either of the two ways: (a) By resignation in writing under addressed to Vice-President of India who shall communicate it to the speaker, Lok Sabha.

(b) By removal by Impeachment (Article 61). The only ground for impeachment specified in Article 61 (1) is 'Violation of the Constitution'.

**Impeachment against the President:** Impeachment is a quasi-judicial procedure mentioned in Article 61. Impeachment charge against the President may be initiated by either houses of the parliament. No President has so far been impeached.



**Vacancy in the office of President [Article 65(1)]:** This may be caused by:

- ✚ On the expiry of the term (5 years)
- ✚ By his/her death
- ✚ By his/her resignation
- ✚ On his/her removal by impeachment
- When he becomes disqualified to hold office or when his election is declared void.
- If the vacancy is caused by ending of the term, election to fill the vacancy must be completed before the expiry. Outgoing President continues to hold office even if his/her term has expired until his/her successor enters his/her office.
- If there is some other reason of vacancy other than expiry of term, election to fill the vacancy must be held within the **6** months from the date of occurrence of vacancy.

The Vice-President shall act as President

**Article 65(1):** If the President is temporarily unable to discharge his/her duties due to an absence from India, illness or any other such cause, Vice-President shall discharge his functions until the President resumes his duties Article 65(2).

In case the office of Vice-President is vacant, the Chief Justice of India (or if his office is also vacant, the senior most judge of the Supreme Court available) acts as the President or discharges the functions of the President.

### **Privileges of the President (Article 361)**

- (a) He is not answerable to any court for the exercise of powers and duties of his office.
- (b) During his term of office, no criminal proceedings, no process for arrest or imprisonment can be undertaken.
- (c) No civil proceeding until.

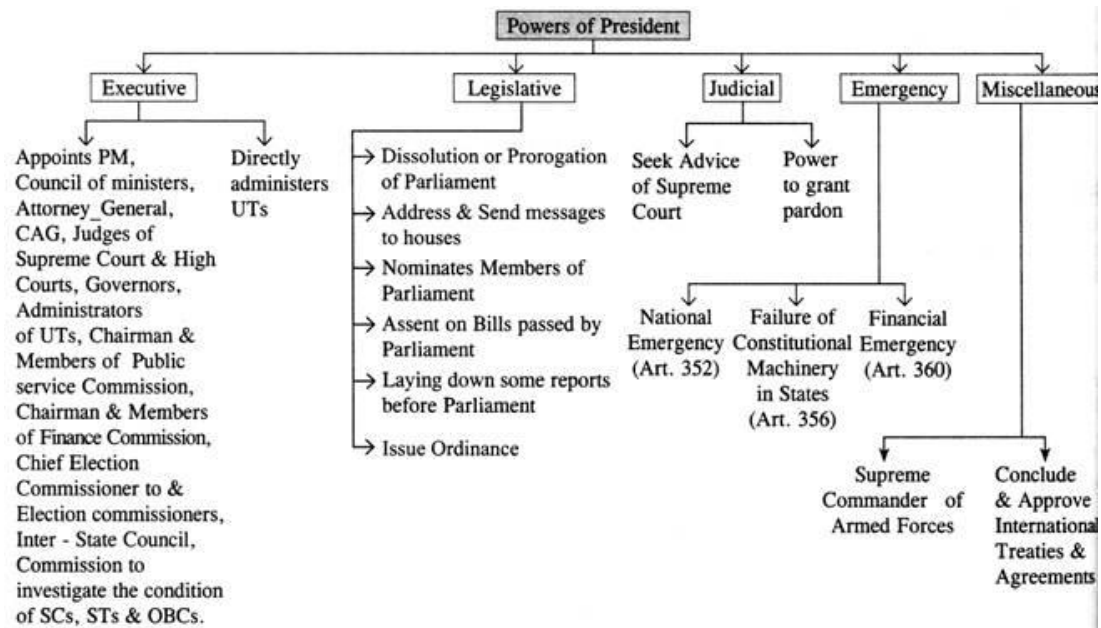
**The value of the vote of an MLA is given below:**

$$\text{Value of the vote of an MLA} = \frac{\text{Total population of state}}{\text{Total number of elected members in the state legislative assembly}} \times \frac{1}{1000}$$

**The value of the vote of an MP is given below:**

$$\text{Value of the vote of an MP} = \frac{\text{Total value of votes of all MLAs of all states}}{\text{Total number of elected members of Parliament}}$$

## Powers and Duties of the President



### Executive Powers

- ❖ “Executive power of the Union shall be vested in the President” (Article 53).
- ❖ All executive powers are exercised by the President with the advice of the Council of Ministers [Article 74(1)].
- ❖ “Executive Power” refers to the power exercised by the Council of Ministers in the name of the President. The Council of Ministers is the "real executive",
- ❖ He appoints the Prime Minister and on his advice ministers of the Union; judges of the Supreme Court and high courts, Governors of the states, Attorney General, Comptroller & Auditor General, Chairman and members of Public Service Commission, members of the Finance Commission, other official commissions, special officers for SCs & STs, commission to report on administration of scheduled areas. Interstate council. Commission to investigate the condition of backward classes, special officers for linguistic minorities.
- ❖ He directly administers the Union Territories through administrator appointed by him.

### Legislative Powers

- ❖ President is a part of the Parliament. He exercises legislative powers with ministerial advice [Article 74(1)].
- ❖ When a bill is presented to the President for his consent, he can take following 3 steps:
  - ✓ He may declare his assent to the bill.
  - ✓ He may declare that he withholds his assent to the bill.

- ✓ He may, in case of bills other than money bills, return the bill for reconsideration of the houses.
- ❖ A money bill cannot be returned for reconsideration.
- ❖ In case of state bills reserved by Governor for consideration of President, President has power of absolute veto, i.e. withholding of assent to the bill.
- ❖ In case of money bill of states so reserved, President may either declare his assent or withhold his assent.
- ❖ He has power to summon, prorogue the Parliament and he can dissolve the Lok Sabha (Art 85). He shall have the power to summon a joint sitting of both houses of Parliament in the case of deadlock over an ordinary bill presided over by Speaker (Art 108).
- ❖ Addresses both houses of Parliament assembled together, at first session after each general election to the Lok Sabha and at the commencement of first session of each year.
- ❖ He lays certain reports and statements before Parliament like: Reports of CAG, UPSC, Finance Commission, Special Officers for SCs/STs, Linguistic minorities, commission on backward classes and Annual Financial Statement (Budget).
- ❖ Nomination of members to both the houses of the Parliament:
  - ✚ For Rajya Sabha, **12** members are nominated. These persons are having the special knowledge of Literature, Science, Art and Social Service [Art 80(1)].
  - ✚ For Lok Sabha, not more than **2** members can be nominated by the President from Anglo-Indian community.
- ❖ He decides on questions of disqualification of MPs in consultation with the Election Commission.

### **Ordinance Making Power of the President (Article 123)**

- ❖ Ordinances can be issued when both the houses of parliament are not in session and the President is satisfied that circumstances exist which make it necessary to take 'immediate action'.
- ❖ This power is exercised on the advice of Council of Ministers. It is the most important legislative power of the President.
- ❖ Ordinances issued by the President have the force of an act of the Parliament.
- ❖ Though the ordinance making power of the President is coextensive with legislative power of the Parliament, it is not a parallel power of legislation. It is the power to meet emergent needs for legislation when the Parliament is not in session.
- ❖ Ordinance making powers of President (Article 123) & Governors (Article 213) are corollary to each other.

**Presidential Veto's:** The Veto power enjoyed by the executive in modern states can be classified into the following:

1. **Absolute Veto:** It is the power to say no to a Bill passed by both Houses of Parliament. Such as Bill never becomes an act. The power cannot be overridden by the legislature. The Indian President has this power in relation in Bills except Money Bills.
  2. **Suspensive Veto:** The President exercises this veto, when he returns a Bill for reconsideration of the Parliament. However, if the Bill is passed again by the Parliament, with or without amendments and again presented to the President, it is obligatory for the President to give his assent to the Bill.
  3. **Pocket Veto:** In this case, the President neither assents nor rejects nor returns the Bill, but simply keeps the Bill pending for an indefinite period. This power of the President not to take any action (either positive or negative) on the Bill is known as the Pocket Veto.
- **President of India enjoys Absolute, Suspensive and Pocket veto.**

### Judicial Powers

- ❖ He appoints the Chief Justices and the other judges of Supreme Court and high courts.
- ❖ He can seek the advice of the Supreme Court on questions of law or fact. The advice tendered by the Supreme Court is not binding on him.
- ❖ **Pardons** which completely absolve the offender from all punishments.
- ❖ **Reprieves** or stay on the execution of the sentence for a temporary period.
- ❖ **Respite** or awarding lesser punishment on special grounds.
- ❖ **Commutation** or substitution of one form of punishment for another form which is lighter.
- ❖ Pardoning powers on the President is to correct possible judicial errors. No human system is totally free from imperfections. The President uses his pardoning powers on the advice of Union Government.

### Financial Powers

- ❖ He causes to be laid before the Parliament the “Annual Financial Statement” or the “Budget”.
- ❖ Money Bill can be introduced in the Parliament only after his approval.
- ❖ Money is released from the Contingency Fund after his sanction.

- ❖ He constitutes a "Finance Commission" after a gap of 5 years to recommend the distribution of revenues between Centre and states.

### National Emergency

- ❖ The President can proclaim emergency in the entire country or in any part of it on the grounds of war, external aggression or armed rebellion. Term 'armed rebellion' was inserted by the 44<sup>th</sup> constitutional amendment act (1978), replacing the original term 'internal disturbance'.
- ❖ The President can proclaim this emergency only after receiving a written recommendation from the cabinet.
- ❖ The proclamation of emergency must be approved by the parliament (both houses) within one month. If approved by the emergency shall continue for six months. It can be extended for an indefinite period with an approved of the parliament for every six months.
- ❖ **A national emergency has been proclaimed three times so far in 1962, 1971 and 1975.**
- ❖ Extend the normal tenure of the Lok Sabha by one year at a time.
- ❖ Suspend the fundamental rights of citizens except the right to life and personal liberty (article 21) and the right to protection in respect of conviction for offences (article 20).
- ❖ If a notice in writing signed by not less than  $\frac{1}{10}$ th of total members of Lok Sabha describing their intention to disapprove the continuation of emergency, served to Speaker of House or to President, if house is not in session, special sitting shall be held within 14 days from date of such notice.

**State Emergency/President's Rule:** Also known as a constitutional emergency, it can be proclaimed by the President on the following grounds:

- Failure of constitutional machinery in the states (article 356) or
- Failure to comply with or to give effect to directions given by the union (article 365)
- ❖ The above proclamation in a State should be approved by the Parliament (both houses) within two months. If approved, it remains in force for six months. It can be extended for a maximum period of three years with the approval of parliament every six months.
- ❖ The President acquires the following extraordinary refers during state emergency :-
  - Assign to himself, all or any of the functions of the state government and powers of the governor.



- Declare that the powers of the state legislature shall be exercisable by or under the authority of the parliament.
- Promulgate ordinances for the administration of the state when the parliament is not in session.

### **Financial Emergency**

- ❖ The President can proclaim financial emergency if he is satisfied that the financial stability or credit of India or any part thereof, is threatened. Such a proclamation must be approved by the parliament within two months.

President acquires the following extraordinary powers:-

- ✓ He can give directions to the states to observe the canons of financial propriety.
- ✓ He can require that all money bills and other financial bills passed by the state legislature be reserved for his consideration.
- ✓ He can issue directions for the reduction of salaries and allowances of all or any class of person serving in connection with the affairs of the union and the states, including the judges of the Supreme Court and high courts.

**This type of emergency has not been declared so far.**

### **Miscellaneous Powers/Residuary Powers**

#### **Military Powers**

- ❖ President is the supreme commander of the armed forces of the country. The exercise of this power is regulated by law (Article 53).
- ❖ He appoints the chiefs of the Army, Navy and Air force.
- ❖ He can declare war or conclude peace subject to the approval of the parliament.

**Diplomatic Powers:** He represents India in international forums. He sends and receives ambassadors and diplomatic representatives.

All treaties and international agreements are negotiated and concluded in his name though subject to approval of the Parliament.

- ❖ He can make rules and regulations relating to matters not mentioned in the Constitution.
- ❖ He has final legislative power for all Union Territories except Pondicherry and Delhi.
- ❖ He has special power for Scheduled Areas, Tribes and Tribal Areas.

### **Vice –President**

- Article 63 of the Constitution provides that there shall be a Vice-President of India.

- Article 66 says that the Vice-President is elected by the member of both houses of Parliament in a joint session by secret ballot with the system of proportional representation by means of single transferable vote. States have no role to play in his election.
- Qualifications of the Vice-President are same as those of President except that he must be eligible for election to Rajya Sabha.
- His term of office is **5** years. He may resign from his office before the expiry of normal term by writing to the President.
- He can be removed from the post of the Vice President by a resolution of the Rajya Sabha, passed by a majority of all the members of the house and agreed to by a simple majority of the Lok Sabha. Such a resolution can be moved only after giving 14 days' notice of the intention to move the resolution.
- Vice-President gets a salary of Rs. 1,25,000/- per month and other emoluments as chairman of Rajya Sabha besides a daily allowance while he presides over Rajya Sabha as admissible to members of the Parliament.

### **Functions of the Vice President**

- No functions are attached to the office of the Vice President.
- He is the ex-officio chairman of Rajya Sabha (Article 64).
- He presides over the meetings of Rajya Sabha but is not a member of Rajya Sabha. He has no right to vote.
- During his discharge of his functions as a president, in case that post falls vacant on account of the death, resignation or removal of the President (Art 65). The Vice-President shall have all powers and immunities of the President.

**The Prime Minister:** The office of the Prime Minister has been created by the Constitution. The Prime Minister is appointed by the President (Article 75). Generally the President has no choice in the appointment of the Prime Minister and invites the leader of the majority political party in the Lok Sabha for this office. But the Prime Minister actually stays in office as long as he enjoys the confidence of the Parliament especially the Lok Sabha. The normal term is **five** years but it is automatically reduced if the Lok Sabha is dissolved earlier. The Prime Minister gets the same salary and allowances which are paid to the members of Parliament. He also receives a constituency allowance like other MPs. In addition, he is also entitled to a sumptuary allowance, free official residence, free travel and medical facilities, etc.

**Powers of Prime Minister:** The Prime Minister enjoys extensive powers which are as follows-

1. The President convenes and prorogues all sessions of the Parliament in consultation with him.
2. He can recommend the dissolution of Lok Sabha to the President before expiry of its normal term.
3. All the members of the Council of Ministers are appointed by the President on the recommendations of the Prime Minister.
4. He allocates portfolios among the various ministers and reshuffles them. He can ask a minister to resign and can even get him dismissed by the President.
5. He presides over the meetings of the Council of Ministers and exercises a strong influence on its decisions.
6. He exercises general supervision over the working of other ministers and ensures that they work as a team.
7. The Prime Minister is the chief channel of communication between the President and the Council of Ministers and keeps the former informed about all the decisions of the Council.
8. He assists the President in the appointment of all high officials.
9. He can recommend to the President, with the concurrence of other cabinet ministers, to proclaim a state of emergency on grounds of war, external aggression or armed rebellion.
10. He advises the President about imposition of Presidential Rule in the states on grounds of breakdown of constitutional machinery or imposition of an emergency due to financial instability.

**11. He is the chairman of the Planning Commission, National Development Council and Inter-State Council.**

### **Council of Ministers**

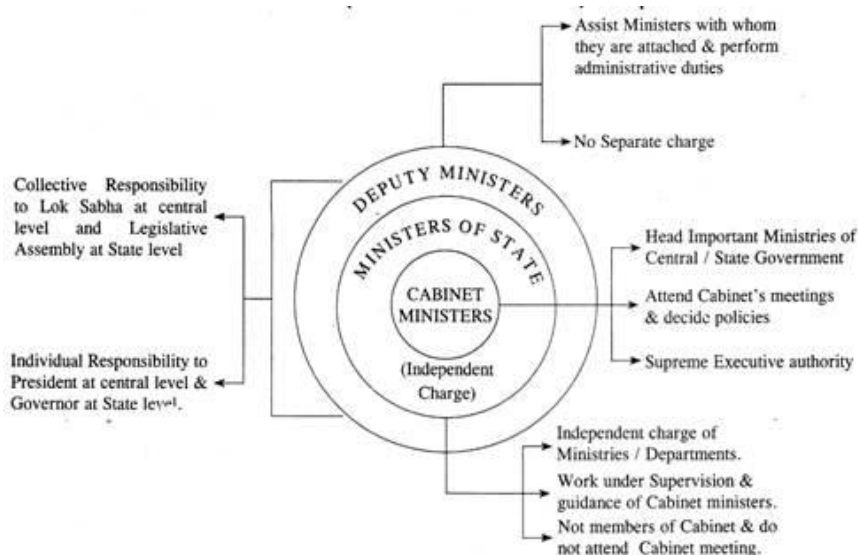
- “There shall be a Council of Ministers with Prime Minister as its head to aid and advice the President, who shall in exercise of his functions act in accordance with such advice” (Article 74(1) after 42nd amendment, 1976).
- The Prime Minister is appointed by the President, Ministers are appointed by the President on advice of the Prime Minister [Article 75(1)].
- The ministers hold office during the pleasure of President [Article 75(2)].

- There is no bar on the appointment of a person from outside the legislature as minister, but he cannot continue as minister for more than 6 months unless he secures a seat in either house of Parliament by election or nomination. [Article 75(5)].
- The salaries of the ministers and their salaries and allowances are determined by the Parliament.
- Constitutional duties of the Prime Minister as provided in Article 78 is to communicate to the President “all decisions” of the Council of Ministers relating to:
  - ✚ Administration of the affairs of the Union.
  - ✚ To furnish information relating to the administration of affairs of the Union and proposals for legislation as the President may call for.
  - ✚ If the President so requires submitting for the consideration of Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

### Powers

- The Council of Ministers formulates and implements the policy of the country.
- It prepares and presents the budget to the Parliament for its approval; and generally it is passed in the form in which it is presented.
- The foreign policy of the Government is determined by the Council of Ministers.

### Composition of Council of Ministers



There are 3 categories of Ministers:

1. **Cabinet ministers** head ministries in the Government. They are members of the Cabinet, attend its meetings and decide policies.

2. **Ministers of state** can have an independent charge or can be attached to cabinet ministers. They are not members of the cabinet nor do they attend its meetings unless invited.
3. **Deputy Ministers** have no separate charges. They assist the ministers with whom they are attached and perform administrative duties.

### **Attorney General of India**

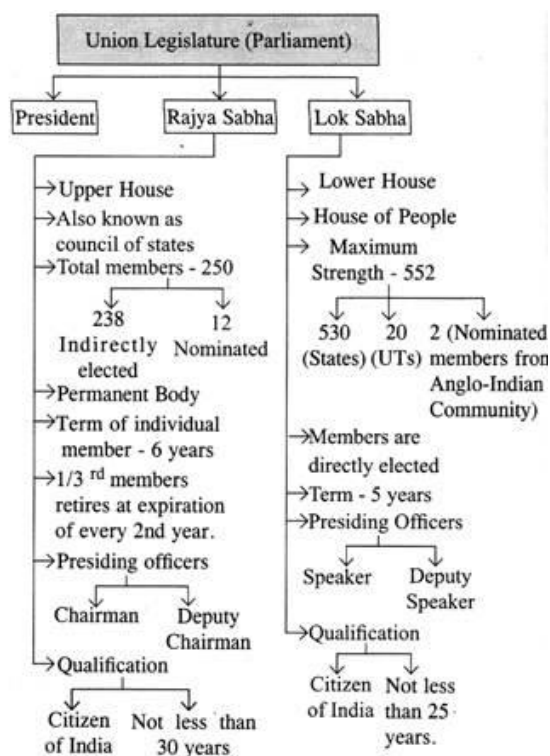
**Attorney General is the highest legal officer of the Union Government and renders legal assistance to it.** He is appointed by the President and holds office during his pleasure.

- To be eligible for appointment as an Attorney General of India, a person must possess the qualifications prescribed for a judge of the Supreme Court.
- He is entitled to such salary and allowances as may be determined by the President.
- The Attorney General is entitled to audience in all courts in the country and can take part in the proceedings of the Parliament and its committees. However, he is not given the right to vote.

### **Functions**

- ✚ He is the chief legal adviser of the Government of India and gives it advice on all such legal matters which may be referred or assigned to him by the President.
- ✚ He also performs such other legal duties as are assigned to him by the President from time to time.
- ✚ The Attorney General appears before the Supreme Court and various High Courts in cases involving the Government of India.

## Union Legislature



**The Parliament:** The Parliament is the Union Legislature of India. It consists of the President and two houses the Lok Sabha (house of people) and Rajya Sabha (council of states). Article 79 to 123 in Part-V deals with the provisions of the Parliament.

**Lok Sabha:** Lower House of the Parliament or First chamber of the house.

- Members of Lok Sabha are directly elected by the people.
- Total membership is fixed at **552** by the Constitution. Their distribution among the States and Union Territories are:
  - ✚ **530** representatives from the states.
  - ✚ **20** members from the Union Territories.
  - ✚ **2** Anglo Indian members nominated by the President if such community has not been adequately represented.
- The mode of election of the Lok Sabha is:
  - State representatives are elected directly by the people of the state.
  - Union territory representatives are elected in the manner prescribed by parliament by law.
- Constitution 61<sup>st</sup> Amendment Act (1987) has reduced the age of voting from 21 to 18 years.

- Term of Lok Sabha is normally 5 years but it can be dissolved earlier by the President.

### Offices of Speaker and Deputy Speaker of Lok Sabha

- The Speaker presides over the Lok Sabha.
- Speaker and Deputy Speaker are elected by the members of Lok Sabha.
- Deputy Speaker performs the duties of the speaker if the office of the speaker falls vacant. If the office of the Deputy Speaker is also vacant, duties of the Speaker shall be performed by member of the house appointed by the President.
- They vacate their office the moment they cease to be a member of the house. The Speaker continues in his office even if Lok Sabha is dissolved. He/she holds the office till the new Lok Sabha meets.
- They can be removed by a resolution of the Lok Sabha with a majority of all the then members of the house. However a 14 days' notice is necessary to move such a resolution.
- To ensure the independence of the Speaker, his/her salary is paid from the Consolidated Fund of India and is not subject to the annual vote of the Parliament.
- He/ she cannot be removed from the office except by a resolution passed by a special majority.
- If the Speaker wants to resign, the letter of resignation should be addressed to the Deputy Speaker and vice-versa.
- Up to the 10<sup>th</sup> Lok Sabha, both the Speaker and Deputy Speaker were usually from ruling party. Since the 11<sup>th</sup> Lok Sabha there has been a consensus that Speaker comes from the ruling alliance and post of Deputy Speaker Goes to the main opposition party.

**Pro Tem Speaker:** As provided by the Constitution, the Speaker of the last Lok Sabha vacates his office immediately before the first meeting of the newly-elected Lok Sabha. Therefore, the President appoints a member of the Lok Sabha as the speaker Pro-Tem. Usually, the senior most member is selected for this. The President himself administers oath to the Pro Tem speaker.

The speaker Pro Tem has all the powers of the speaker. He presides over the first sitting of the newly elected Lok Sabha. His main duty is to administer oath to the new members.

**Rajya Sabha:** The Rajya Sabha is the second chamber or Upper House of the Parliament. It consists of representatives of the states. The maximum strength of the Rajya Sabha is 250. Of



these, 238 represent the states and union territories and the rest (12) are nominated by the President. The nominees are persons who have distinguished themselves in the field of literature, art, science, social service and so on. Representatives of the states are elected by members of state legislative assemblies on the basis of proportional representation through a single transferable vote. It is noteworthy that in the Rajya Sabha, the states have been provided representation on the basis of their population.

- Rajya Sabha is a permanent house and is not subject to dissolution.
- Its members are elected for a period of 6 years but 1/3<sup>rd</sup> of its members retire after every 2 years.

As regards qualifications for membership of the Rajya Sabha, the candidate must -

- Be a citizen of India.
- Be 30 years of age or more.
- Be a parliamentary elector in the state in which he is seeking election.
- Possess such other qualifications as may be prescribed by the Parliament from time to time.

### **Chairman and Deputy Chairman of Rajya Sabha**

- The Vice-President of India is the ex-officio chairman of the Council of States.
- Deputy Chairman is elected by the Rajya Sabha. He shall be a member of Rajya Sabha.
- Office of Deputy Chairman terminates if he ceases to become the member of the Council.
- Deputy Chairman can also resign, submitting his resignation to the Chairman in writing. He can also be removed from his office by a resolution of the Rajya Sabha, passed by a majority of all the then members of the Council. But such a resolution can only be moved by giving at least 14 days' notice in advance.
- If the office of Chairman is vacant, Deputy Chairman discharges his functions. But if the office of Deputy Chairman is also vacant, the duties of his office shall be discharged by such a member of the Rajya Sabha as the President may appoint for the purpose.

### **Qualifications for the Membership of Parliament (Art 84)**

- The individual contesting should be a citizen of India.
- He should be at least 30 years of age for Rajya Sabha and 25 years for Lok Sabha.
- He should possess such other qualifications as prescribed by the Parliament.

- His name should be registered as a voter in any parliamentary constituency.
- No minimum educational qualification has been prescribed.
- He/she must not hold any office of profit under the Union or state government.

#### **Disqualification from Membership of Either House of Parliament**

- If the individual holds an office of profit under GOI or a state government.
- If the individual is of unsound mind which has been declared so by a competent court.
- The individual is not a citizen of India and has voluntarily acquired citizenship of a foreign country.
- If he is so disqualified by or under any law made by the Parliament (Art 102). President has to obtain the opinion of the Election Commission before disqualifying a member, (Art 103).
- If elected to both to the Parliament and state legislature, he needs to resign from the state legislature.
- If he remains absent from all meetings of the house for a period of **60** days without prior permission of the house.

#### **Powers, Privileges and Immunities of Parliament and its Members**

- Both the houses of the Parliament and state legislature have same privileges. Art 105 (1) & (2) and Art 194 (1) & (2) state the privileges to both the houses of parliament and state legislature.

#### **Individual Privileges**

- Freedom from arrest in civil cases. There would be arrest in criminal cases or under preventive detention.
- Freedom from attendance as a witness: a member cannot be summoned by a court to give evidence as a witness while the Parliament is in session.
- Freedom of speech: A member of the Parliament is not liable in any court for anything said in Parliament or any of its committees.

#### **Collective Privileges of Each House**

- Right to publish debates and proceedings.
- Right to restrain publications by others.
- Right to regulate internal affairs of the house and to decide matters within its walls.
- Right to punish any parliamentary misbehaviour.

#### **Joint Session of the House**

- **Art 108 provides** that when a bill is passed by one house is sent to the other. The other house may:
  - Reject the bill altogether.
  - Disagrees on it and returns it with some amendments which are not ultimately considered by the originating house.
  - Takes no action and more than 6 months' time has passed.

The President in such a case may summon a joint sitting of both the houses.

- At a joint sitting of two houses, the Speaker of the Lok Sabha and in his absence, the Deputy Speaker, or if he is also absent, Deputy Chairman of the Council of States and if he is also absent, such person as may be determined by the members present in the sitting presides. Lok Sabha by its numerical majority prevails over the joint sitting.
- This provision does not apply to money bill.
- There cannot be a joint sitting for Constitution Amendment bills. Nor do such bills require previous sanction of the President.
- President cannot summon a joint sitting if the bill has lapsed by reason of dissolution of Lok Sabha.

**Sessions of the Parliament:** A 'Session' of the parliament is the period spanning between the first sitting of a House and its prorogation (or dissolution in case of Lok Sabha). During a session the House meets every day transact business.

**Parliament normally meets in three sessions in a year:-**

- **Budget Session: February - May**
- **Monsoon Session: July - August**
- **Winter Session: November – December**

Control of the parliament Over the Executive	
Question hour	<ul style="list-style-type: none"> <li>✓ First hour of every parliamentary sitting.</li> <li>✓ Starred questions are answered orally and supplementary questions can follow.</li> <li>✓ Un-starred questions are answered in writing.</li> <li>✓ Short notice questions are asked giving less than 10 days notice.</li> </ul>
Zero hour	<ul style="list-style-type: none"> <li>✓ Starts immediately after the question hour.</li> <li>✓ Any matter can be discussed during the zero hour.</li> </ul>
Half-an-hour discussion	<ul style="list-style-type: none"> <li>✓ To clear fact on matters of public importance on which lot of debate has occurred.</li> </ul>
Short duration	<ul style="list-style-type: none"> <li>✓ To discuss urgent matters.</li> </ul>

discussions	✓ Also known as two hour discussion.
Calling attention motion	✓ Moved to call the attention of a minister to matters of public importance.
Adjournment motion	<ul style="list-style-type: none"> <li>✓ To draw attention of parliament to a matter of urgent public importance.</li> <li>✓ Motion needs the support of 50 members for admission.</li> <li>✓ Rajya Sabha cannot move this motion.</li> </ul>
No confidence motion	<ul style="list-style-type: none"> <li>✓ Moved to prove the confidence of Lok Sabha in the Council of Ministers.</li> <li>✓ If No Confidence motion is passed, council of Ministers has to resign.</li> <li>✓ No Confidence motion needs the support of 50 members to be admitted.</li> <li>✓ Can be moved only in Lok Sabha.</li> </ul>
Censure Motion	<ul style="list-style-type: none"> <li>✓ This motion seeks to censure the government for its lapses.</li> <li>✓ If the Censure Motion is passed against the government, it should pass a Confidence motion as soon as possible to regain the confidence of the house.</li> <li>✓ And government does not need to resign immediately unlike in case of No-Confidence Motion.</li> <li>✓ It can be moved against an individual minister for specific policies or actions.</li> <li>✓ It is in practice since 1954.</li> </ul>

**Parliamentary Committees:** Parliamentary Committees are of two kinds – **Ad-hoc Committees** and the **Standing Committees**.

**Ad-hoc Committees** are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report. The principal Ad-hoc Committees are the Select and Joint Committees on Bills.

Apart from the Ad-hoc Committees, each House of Parliament has Standing Committees like the Business Advisory Committee, the Committee on Petitions, the Committee of Privileges and the Rules Committee.

**Committee on Public Accounts:** This committee was first set-up in 1921 under the provisions of the Government of India Act, 1919. This committee consists of 22 members (15 from Lok Sabha and 7 from Rajya Sabha). A minister is not eligible for election to this committee. The term of the committee is 1 year. The main duty of the committee is to ascertain whether the money granted by Parliament has been spent by government 'within the Scope of the Demand.'

**Cabinet and Central Secretariat:** There is no uniform terminology describing the various segments of administrative structure of the Union government. The central secretariat is a

collection of a variety of ministries and departments. But the cabinet secretariat is a ministry comprising more than one department.

The term “ministry” came into vogue only after independence in 1947. A ministry is the charge allotted to a minister which may include one or more departments, each under the charge of a secretary. Many large ministries like defence, external affairs, finance and home have more than one department included in their charge.

A department is an organisational unit consisting of a secretary with a part of the central secretariat under his administrative control. If a ministry has more than one department, it may have more secretaries, but only one senior will represent the ministry. Formerly, such secretaries were designated as the secretary general or the principal secretary. So even if all the secretaries draw the same salary, they may not necessarily enjoy equal rank.

### **The Internal Hierarchy of the Ministry**

The lowest unit of a ministry is the section. It consists of assistants, clerks, ‘daftaries’, typists and peons. Two sections constitute the branch. Branch is under the charge of an undersecretary who is also known as the branch officer. Two branches form a division that is headed by a deputy secretary.

Department: Secretary/Additional/Special Secretary

Wing: Joint/Additional Secretary

Division: Director/Deputy Secretary

Branch: Under Secretary

Section: Section Officer

Office: Assistant, Clerk, Subordinate

**Functions of Secretariat:** The secretariat is a staff agency through which it has to advise the executive departments in the implementation of the public policies. The basic function of the secretariat is to assist the minister in the fulfilment of their role. Following are the functions performed by the secretariat.

1. The secretariat formulates the policies and programmes of the state government.
2. It coordinates the policies and programmes of the state government.
3. It prepares the state budget and imposes control on public expenditure.
4. It frames legislation, rules and regulations.
5. It supervises the implementation of policies and programmes by the field agencies.
6. It reviews the results of the execution of public policies.
7. It maintains contacts with the central and other state governments.

8. It assists the ministers in discharging their responsibilities to the legislature, like answering the questions asked by the members of the legislative Assembly.
9. It approves the service rules and their amendments.
10. It explores the possibilities of improving the financial position of the state.
11. It assists the chief secretary in the proper functioning of the secretariat.
12. It receives the complaints, representations and appeals from the people and solves them.

### **Chief Secretary**

The Chief Secretary is the executive head of the state secretariat. Chief Secretary is the administrative head of the state administration and stands at the apex of the hierarchy of state administration. Chief Secretary controls all the secretariat departments. Chief Secretary is the senior-most civil servant in the state. Chief Secretary receives some of its powers from conventions. Chief Secretary performs the following primary and other functions.

#### **Primary Functions**

1. Chief Secretary is the advisor to the Chief Minister and explains the administrative implications of the proposals forwarded by the state ministers.
2. As secretary to the cabinet, chief secretary prepares the agenda for cabinet meetings and keeps all the records of its proceedings.
3. Chief Secretary deals with all cases related to appointment, transfers and promotion of senior state civil servants.
4. Chief Secretary Works towards ensuring inter departmental coordination. He is the chairman of coordination committees set up for resolving the inter-departmental disputes.
5. Chief Secretary plays a very significant role in the time of crisis like flood, drought, communal disputes, etc in the state.

#### **Other Functions**

1. Chief Secretary has administrative control over the secretariat building, staff attached to the ministers, the secretariat library and ward staff of the secretariat departments.
2. Chief Secretary is the principal channel of communication among the state government, the central government and the other state governments.
3. Chief Secretary plays an important role in the administration of law and order and planning.

4. Chief Secretary acts as a spokesman of the state government.
5. Chief Secretary attends the meetings of the National Development Council.
6. Chief Secretary acts as the chief public relations officer of the state government.
7. Chief Secretary acts as the chief advisor to the governor when president's rule is imposed in the state under Article 356 of the constitution, when the central advisors are not appointed.

### **Central Secretariat Service**

Central Secretariat Service (CSS) is the administrative civil service under Group A and Group B of the Central Civil Services of the executive branch of the Government of India. They are governed by Central Secretariat Service Rules of 1962, which has been issued under the powers of Article 309 of the Constitution of India. The service members work under restrictions and rules of Central Civil Services (Conduct) Rules.

The service serves as the backbone of administrative work and provides permanent bureaucracy and functionary staff in the Union Government ministries, Cabinet Secretariat, Central Secretariat and other offices of Government of India.

Based on CSS service model, State governments like Bihar, Uttar Pradesh have organised their own independent services like Bihar Secretariat Service and Provincial Secretariat Service of UP. The Union Government ministries such like Railways, Defence and External Affairs, have organised their own independent services based on CSS model which are known as Railway Board Secretariat Service, Armed Forces Headquarters Civil Services and Indian Foreign Service, Group B (general cadre) respectively.

### **Recruitment**

From 1946 until 2003, 50 percent of direct recruitment into CSS was through the Civil Services Examination conducted by the Union Public Service Commission, the next 25 percent recruitment was through Annual Departmental Examination and next 25 percent by promotion.

However, after the cadre restructuring in 2003, the direct recruitment into CSS through the Civil Services Examination has been stopped.

The mode of recruitment was changed to the grade of Section Officer by way of 50% through Limited Departmental Competitive Examination by Union Public Service Commission and 50% by seniority.

### **Allocation and placement**



After appointment by the President, the officers (Entry grade/Probationers) are allocated to different Ministries/Departments under Government of India. The Group B officers work in the levels of Assistant Section Officer and Section Officer/Assistant Director (For Directorate). The Group A officers work in the levels of Under Secretary/Deputy Director (For Directorate), Deputy Secretary/Joint Director (For Directorate), Director, Joint Secretary and Additional Secretary under Central Staffing Scheme of Government of India.

The officers are posted in various Ministries and Departments, Prime Minister's Office, National Security Council Secretariat, intelligence agencies, Apex /Autonomous organizations of Government of India located at different places in the Secretariat in New Delhi. They are also appointed in personal staff of Union Council of Ministers of India and also as advisor in Union Government ministries.

### **Deputations**

The officers are also posted outside Delhi, or at various places of the country in other offices upon deputation. They can also be deputed for service under an international organization, an autonomous body not controlled by the Government, or a private body as same as under Rule 6 (2) (ii) of IAS (Cadre) Rules.

UNIT-III

ELECTION COMMISSION

**ELECTION COMMISSION OF INDIA:** The Election Commission of India (ECI) is a self-governing constitutional body which oversees the election process in India as per the Constitution of India. The ECI was set up on **January 25, 1950**, with the aim of defining and controlling the multi-tiered election process in our country. The Election Commission of India administers the election process from the President of India to the State Legislative Assembly.

As per **Article 324** of the Indian Constitution, ECI has the supervisory and directional control of the complete process, election to Parliament and Legislature of every State and to the office of the President and the Vice-President of India.

**Background of Election commission of India**

- Part XV of the Indian constitution deals with elections, and establishes a commission for these matters.
- Article 324 to 329 of the constitution deals with powers, function, tenure, eligibility, etc of the commission and the member.

Articles related to Elections	
<b>324</b>	Superintendence, direction and control of elections to be vested in an Election Commission.
<b>325</b>	No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.
<b>326</b>	Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.
<b>327</b>	Power of Parliament to make provision with respect to elections to Legislatures.
<b>328</b>	Power of Legislature of a State to make provision with respect to elections to such Legislature.
<b>329</b>	Bar to interference by courts in electoral matters.

**Constitutional Appointment of ECI:** Since its inception in 1950 and till 15 October 1989, the election commission was as a one-member body with only the Chief Election Commissioner (CEC) as its sole member.

- On 16 October 1989, the voting age was changed from 21 to 18 years. So, two more election commissioners were appointed by the president in order to cope with the increased work of the election commission.
- Since then, the Election Commission was a multi-member body which consisted of 3 election commissioners.
- Later on, the two posts of election commissioners were eliminated in January 1990 and the Election Commission was reverted to the previous position.
- This was repeated again later in October 1993 when the president appointed two more election commissioners. Since then, the Election Commission functions as a multi-member body comprising of 3 commissioners.
- The chief and the two other election commissioners have the same powers and emoluments including salaries, which are the same as a Supreme Court judge.
- In case of difference of opinion amongst the Chief Election Commissioner and/or two other election commissioners, the matter is decided by the Commission by a majority.
- The office is held by them for a term of 6 years or until they attain 65 years, whichever happens first. They can also be removed or can resign at any time before the expiry of their term.

### **Composition of Election Commission**

Article 324 of the Constitution has made the following provisions with regard to the composition of election commission:

- The President appoints the Chief Election Commissioner and other election commissioners.
- When any other EC is so appointed, the CEC acts as the Election Commission's Chairman.
- The President can also appoint regional commissioners to assist the Commission, if necessary after consulting with the Election Commission.
- The tenure of office and the conditions of service of all the commissioners shall be determined by the country's President.

**Powers, Functions, and Responsibilities of Election Commission:** Among the major Constitutional Bodies in India, Election Commission is a permanent Constitutional Body. It was established in accordance with the Constitution on 25<sup>th</sup> January 1950.

- The Constitution has vested to this body superintendence, direction and control of the entire process for conduct of elections.
- The Commission's functions and powers with respect to elections to the offices of the President, the Vice President, the state legislators and the Parliament are divided under three headings:
  - Administrative
  - Advisory
  - Quasi-judicial

#### Administrative Powers

- Allotting territorial areas for electoral constituencies in the country.
- Organise and amend electoral rolls and register eligible voters.
- Inform dates and schedule of elections and scrutinize nomination papers.
- Give recognition to political parties and assign election symbols to them.
- ECI appoints the following seats:
  - Chief Electoral Officer
  - District Election Officer
  - Returning Officer
  - Electoral Registration Officer

#### Advisory and Quasi-Judiciary Powers

- The Election Commission of India has advisory jurisdiction in terms of post-election ineligibility of sitting members of the Parliament and State Legislature.
- Cases where an individual is found guilty of malpractice at elections by the Supreme Court or High Courts are referred to the ECI for its opinion of the said person's disqualification. In such cases, the judgement passed by the ECI is final and binding on the President of India or the Governor as per jurisdiction.
- The Election Commission of India also has the power to ban any candidate who has not lodged an account of election expenses by the deadline and as per the law.
- ECI can also remove or reduce the period of disqualification as per the law.

### Functions/ Roles of ECI

- Election Commission of India superintendents, direct and control the entire process of conducting elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India.
- The most important function of the commission is to decide the election schedules for the conduct of periodic and timely elections, whether general or bye-elections.
- It prepares electoral roll, issues Electronic Photo Identity Card (EPIC).
- It decides on the location polling stations, assignment of voters to the polling stations, location of counting centres, arrangements to be made in and around polling stations and counting centres and all allied matters.
- It **grants recognition to political parties & allot election symbols** to them along with settling disputes related to it.
- The Commission also has **advisory jurisdiction in the matter of post-election disqualification** of sitting members of Parliament and State Legislatures.
- It **issues the Model Code of Conduct in election** for political parties and candidates so that the no one indulges in unfair practice or there is no arbitrary abuse of powers by those in power.
- It **sets limits of campaign expenditure per candidate** to all the political parties, and also monitors the same.

### Importance of ECI

- ❖ The ECI has been successfully conducting national as well as state elections since 1952. In recent years, however, the Commission has started to play the more active role to ensure greater participation of people.
- ❖ The Commission had gone to the extent of disciplining the political parties with a threat of derecognizing if the parties failed in maintaining inner-party democracy.
- ❖ It upholds the values enshrined in the Constitution viz, equality, equity, impartiality, independence; and rule of law in superintendence, direction, and control over the electoral governance.
- ❖ It conducts elections with the highest standard of credibility, freeness, fairness, transparency, integrity, accountability, autonomy and professionalism.
- ❖ It ensures participation of all eligible citizens in the electoral process in an inclusive voter-centric and voter-friendly environment.
- ❖ It engages with political parties and all stakeholders in the interest of the electoral process.

- ❖ It creates awareness about the electoral process and electoral governance amongst stakeholders namely, voters, political parties, election functionaries, candidates and people at large; and to enhance and strengthen confidence and trust in the electoral system of this country.

### STATE ELECTION COMMISSION:

The **Constitution of India** vests in the State Election Commission, consisting of a State Election Commissioner, the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections to the Panchayats and the Municipalities (**Articles 243K, 243ZA**).

The State Election Commissioner is appointed by the Governor.

As per **Article 243(C3) the Governor**, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the SEC by clause (1).

Parts IX and IXA have been added to the Constitution to enable the Panchayats and Municipalities to function as institution of Self-Government at the grass root level of democracy with certainty and continuity, endowed with such powers and authority for preparing and implementing plans and schemes in respect of matters entrusted to them for economic development and Social Justice. The Constitution itself has facilitated provision for smooth, free and fair, regular elections to the Local bodies and has, therefore, entrusted the State Election Commission with the responsibility for holding elections in a manner as to inspire credibility and confidence of the general public.

In the domain of the elections to the local bodies, the State Election Commission functions independently and has same powers and duties as that of the Election Commission of India.

### What was the need for State Election Commissions?

Under the Constitution, **establishment of local self-government institutions is the responsibility of the states** (entry 5, List II, Seventh Schedule). However, experience showed that not all state governments were serious about empowering Panchayati Raj institutions, as elections were not being conducted regularly.

The Constitution was **amended in 1992 to define the term (five years) for these institutions**. Simultaneously, another provision was made for setting up a constitutional authority, the SEC, on the lines of the EC to conduct regular panchayat elections.

**The ECI and SECs have a similar mandate; do they also have similar powers:** The provisions of **Article 243K** of the Constitution, which provides for setting up of SECs, are almost identical to those of **Article 324** related to the EC. In other words, the SECs enjoy the same status as the EC.

**How far can courts intervene?**

Courts cannot interfere in the conduct of polls to local bodies and self-government institutions once the electoral process has been set in motion.

**Article 243-O** of the Constitution bars interference in poll matters set in motion by the SECs;

**Article 329** bars interference in such matters set in motion by the EC. Only after the polls are over can the SECs' decisions or conduct be questioned through an election petition. These powers enjoyed by the SECs are the same as those by the EC.

**In practice, are the SECs as independent as the EC?**

Although state election commissioners are appointed by the state governors and **can only be removed by impeachment**, in the last two decades many have struggled to assert their independence.

**Functions of State Election Commission:**

The first and foremost duty of the State Election Commission is to prepare the elector rolls of Panchayats, Municipalities and Municipal Corporation and conduct their elections. The Election Commissioner is also the Chairman of the Delimitation Commission. In addition to the above functions, the State Election Commission has also the following functions.

- (i) Conduct of elections to the offices of the Mayor/Chairman/President/Deputy Mayor/Vice Chairman/Vice President and the no-confidence motion against them.
- (ii) Conduct of the Elections to various Standing Committees and their Chairpersons
- (iii) Determination of disqualification of elected members/Councillors.
- (iv) Determination of disqualification of elected members on the ground of defection.

**SPECIAL PROVISIONS FOR SC's & ST's**

The preamble to the constitution declares that India is a sovereign, Socialist, Secular & Democratic Republic that secures to all its citizens. Justice: Social Economic & Political. Indian constitution guarantees essential boons of Justice, Liberty, Equality; Secularism & Socialism under Part-III containing Fundamental Rights and the Ideals of Social and Economic Democracy has contained in Part IV having Directive Principle of State Policy.



**Constitutional Provisions for SC's/ST's:** The Constitution of India provides for a number of safeguards for the Scheduled Castes and Scheduled Tribes which are of its unique features. The safeguards have apparently helped these communities in protecting their legitimate interests and accelerated their socio-economic development.

The credit for incorporating these safeguards in the Constitution of India goes to Dr. Bhimrao Ramji Ambedkar, Chairman of the Drafting Committee of the Constitution.

**Article 46:** Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and Other Weaker sections— The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

**Article 341: Scheduled Castes:**

The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor. Thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

**Article 342: Scheduled Tribes:**

The President may with respect to any State or Union territory and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

**Article 15:** Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

**Article 16:** Equality of opportunity in matters of public employment.

**Article 17(Abolition of Untouchability):** Abolition of Untouchability-Untouchability is abolished and its practice in any form is forbidden. The enforcement

of any disability arising out of Untouchability shall be an offence punishable in accordance with law.

### **Special Grants under Article 275**

Article 275(1) provides that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of State. Government of India for the purpose of promoting the welfare of scheduled tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that state.

## **SPECIAL PROVISIONS UNDER THE CONSTITUTION FOR WOMEN AND CHILDREN**

The framers of the Indian constitution best owed sufficient thought on the position of Women & Children in the social order. This is evident from the provision of the constitution, which have not only ensured equality between men and women but also provided specifically certain safeguards in favour of women & children. Equality of status & of opportunity is associated to the principle of social justice. Women & children require special treatment on account of their nature.

**ARTICLE 14:** the state shall not equality deny before to the any law person or equal protection laws with in the territory of India." This provision aims at establishing Equality of status in the preamble and guarantees to all persons, including women and children, the right to equality in law.

**ARTICLE 15:** The state shall not discriminate against any citizen on grounds of religion, race, Caste, Sex, Place of birth or any of them.

### **SPECIAL PROVISIONS FOR WOMEN:**

**Article 15 (3)** has enabled the state to make special provisions under:

**Section: 354** Indian Penal Code (IPC): Assaulting or using force to a woman with intent to outrage her modesty; imprisonment for 2 years or with fine or with both.

**Section 497 IPC:** Which only punishes man in cases of Adultery & Exempts the women from punishment even though she may be equally guilty as an abettor? This provision is also applicable for children.

**Section 494 IPC:** This makes Bigamy (second marriage) a punishable offence. **The Hindu Marriage Act of 1955** has made Bigamy punishable offence & given greater strength to monogamy Reservation of seats in local body.

**The Hindu Succession Act, 1956** made for reaching changes in the law improved the

position of women & treated women on par with men in case of property succession. Separate educational institutions exclusively for women. Reservation of a seats or places for women in public conveyances & places of public resort.

**The Factories Act, 1948** provides separate facilities & treatment for women.

**Maternity Benefit Act, 1961** provides free medical treatment & maternity leave for women.

**Article 39(a):** Equal Right of men and women to adequate means of livelihood and free legal aid.

**Article 39(d):** Equal pay for equal work for both men and women.

**Article 42:** Directs the state to make provision for securing just human conditions and for maternity relief.

**Article 47:** Duty to raise the stand of living and improvement of health.

### **SPECIAL PROVISIONS FOR CHILDREN:**

Article 15(3) empowers the state to make special provision for children. The constitution makers had known that the India of their vision would not be a reality, if the children of the country are not matured and educated.

**Article 21-A:** The Constitution (86th amendment) Act, 2002 added this Article 21-A has made education for all children of the age of 6 to 14 years a fundamental right.

For the success of democratic system of Government, education is one of the basic elements. Education gives a person human dignity & develops himself & contributes to the development of the country.

The Supreme Court during 1993 in Unnikrishnan Case declared that right to education for the children of the age 6 to 14 is a fundamental right. Even after this, there was no improvement, but the Government enacted constitution (86<sup>th</sup> Amendment) Act, 2002 which would make education a Fundamental Right.

**Article 24:** No Child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. This Article prohibits employment of children below 14 years of age in factories & hazardous employment. The following are Indian legislations dealing with prohibition & regulation of child labour. The General Legislations are:-

✚ The Factories Act, 1948.

✚ The Plantation workers act, 1951.

✚ The Mines Act, 1952.

✚ The Merchant & Shipping Act, 1958.

✚ The Motor Transport Workers Act, 1961.

✚ The Beedi & Cigar Workers Act, 1966.

✚ The Dangerous Machinery Act, 1983.

**Article 39(f):** The Children are given opportunities & facilities to develop in a healthy manner & in conditions of freedom & dignity & that childhood & youth are protected against exploitation & against moral & material abandonment.

**CONSTITUTIONAL PROVISIONS FOR BACKWARD CLASSES:**

It is now necessary to know the constitutional provisions for backward classes in Article-14, 15, 16 & 17 & other provisions of the constitution.

The constitution of India guarantees protection from social injustice and all forms of exploitation. However in practice it may be observed that the net result of the working of the constitution for more than sixty years the level of participation and extent of social opportunities remained dismal and insignificant for BC/OBCs constituting more than 52% of national population.

**Preamble:** The preamble of the Constitution of India aimed at securing to all its citizens, “Justice- social, economic and political; Equality of status and opportunity”.

**Article-14:** State shall not deny to any person equality before the law and equal protection of laws within the territory.

**Article 15** prohibits discrimination on various grounds.

**Article 15 (4):** “In this Article or in clause 2 of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.

**Article 16:** Ensures equality in public employment. The ingredient of Socialism finds that the state may introduce to uplift the weaker sections or backward classes of the society.

**Article 340:** Which provides the President may by order appoint a commission to investigate the conditions of Backward. The commission so appointed may in its report suggest, among others, steps that should be taken to improve their conditions.

**Article 340(1):** “The President may order to appoint a commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally Backward Classes within the territory of India, and the difficulties under which the labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made and the order appointing such commission shall define the procedure to be followed by the commission.”

## UNIT-IV

### STATE GOVERNMENT AND ITS ADMINISTRATION

#### STATE ADMINISTRATION:

Part VI of the Constitution deals with state administration. The Governor shall be appointed by the President for a term of five years and he shall hold office during the pleasure of the President. The executive power of the state shall be vested in the Governor. These powers shall be exercised by him either directly or through the officers subordinate to him. In the state administration there shall be a council of ministers and the functions of the council of ministers is to aid and advise the Governor in the exercise of his functions.

The state government enjoys authority to make laws on State List and to run the administration accordingly. The powers of the state government on the Concurrent List are limited or qualified. But the state government has no power to make law for running administration on a subject that falls under the jurisdiction of union legislature.

#### What is a state government?

In a federal form of government, the state government is the government of a country's subdivisions and shares political power with the national government.

In the Constitution of India, which is a sovereign socialist secular democratic republic, the country has three levels of governments: the Central, the States and the Union Territories, besides the third level of governments, comprising the panchayats in rural areas and municipalities in urban areas. In India, the state governments are the level of government below the central government. Each state of the country is governed by the state government. There are 29 state governments in our country, each of which is headed by the governor and the chief minister. The CM also heads the council of ministers.

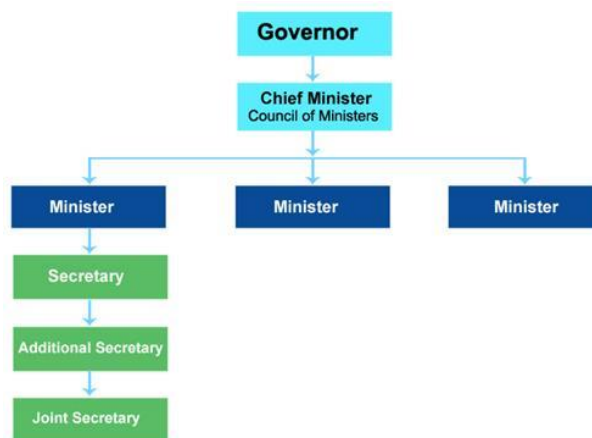
#### ROLES AND RESPONSIBILITIES OF THE STATE GOVERNMENTS

State governments have separate departments for proper functioning of the state. States have authority over education, agriculture, public health, sanitation, hospitals and dispensaries and many other departments.

- **Internal security:** The state governments have to maintain the internal security, law and order in the state. Internal security is managed through state police.
- **Public order:** States have jurisdiction over police and public order.
- **Education:** Providing a public education system, maintaining school buildings and colleges, employment of teachers, providing help to under privileged students all come under the education department of the state.

- **Agriculture:** The state governments have to provide support for farmers, funds for best farming practices, disease prevention and aid during disasters such as floods or droughts.
- **Finances:** State legislature handles the financial powers of the state, which include authorisation of all expenditure, taxation and borrowing by the state government. It has the power to originate money bills. It has control over taxes on entertainment and wealth, and sales tax.
- **Reservation of bills:** The state governor may reserve any bill for the consideration of the President.
- **Transport:** State government runs the trains, bus and ferry services and other public transportation in the cities and towns of the States.
- **Water Supply:** Water supply to cities and towns for drinking, including irrigation for farmers, is the responsibility of the State governments.
- **Budget:** State governments make budget for state.
- **Allocation of funds:** It has the power to give funds to all its organizations like Zila Parishad, corporation, and other departments.

### Structure of state administration:



### GOVERNOR

The Governor is generally appointed by the President of the Nation under Article 155 of Indian Constitution. The governor shall be appointed by the President under his seal and warrant.

**Method of Appointment:** Constitution of India lays down for the office the Governor of each State.” However, one person can also function as a Governor of two or more states. The President of India appoints the Governor of each state and while doing so he acts upon the advice of the Prime Minister.

**Two important practices regarding the Appointment of a Governor:** The **first** practice is that the person being appointed as the Governor is mostly not a resident of the state for which he is appointed.

**Secondly**, before appointing a Governor, the Union Government consults the concerned State Government particularly the Chief Minister of that State. It is now a respected rule.

Along with these two healthy practices, an unhealthy practice has also developed. Sometimes ‘defeated’ or very old political leaders are appointed as Governors. Further, sometimes the unhealthy practice of wholesale transfers or removals of Governors takes place after a change of government at the Centre.

### **Qualifications for the Office of the Governor:**

The candidate shall fulfil the listed criteria given below to be appointed as Governor of the state enshrined in Article 157 of Indian Constitution. The following qualifications are essential for the office of the Governor of a State:

- (1) He is to be a citizen of India.
- (2) He has to be above the age of 35 years.
- (3) He is not to be a member of either House of Parliament or of the Legislature of any state.
- (4) He is not to be holding any office of profit in the Government.
- (5) He is not to be a declared bankrupt by any court of law.

Mostly persons of repute and eminence in public life or senior politicians or retired civil and military officers are appointed as Governors.

**Tenure:** The Governor is appointed for a period of five years. However, he holds office during the pleasure of the President. The President can remove or transfer him at any time.

**Oath or Affirmation by the Governor:** It has to be taken in the presence of the Chief Justice of the concerned State High Court.

### **Powers and Roles of the Governor:**

**Executive Powers:** Governor is the head of the State. The Constitution gives executive powers of the state to the Governor. He appoints the Chief Minister and other ministers on the advice of the Chief Minister. Ministers hold office during the pleasure of the Governor.

The Governor can remove the Chief Minister of the province in case he feels that his government does not enjoy the confidence of the majority in the State Legislative Assembly or is not working according to the provisions of the Constitution.

All major appointments (Advocate General, Chairman and Members of Public Service Commission, Vice-Chancellors) in the state are made by the Governor. But in doing so, the



Governor depends upon the advice of the State Chief Minister and the State Council of Ministers.

The Chief Minister of the State has to keep the Governor informed about the state administration and the decisions taken by his ministry. Governor can seek from the Chief Minister any information about the state administration. He may call upon the Chief Minister to place the decision of an individual minister before the Council of Ministers for consideration. The President consults the Governor while appointing the judges of the State High Court. The Governor acts as the Chancellor of the state universities.

Normally, the Governor exercises all his executive powers in accordance with the advice of the State Council of Ministers and the Chief Minister. The ministers are responsible for all the acts of the Governor. But during a constitutional emergency in the states the Governor becomes a real executive head of the state uses all executive powers with the help of some advisors.

**Legislative Powers:** The Governor is not a member of the state legislature and yet he is a part of it. All bills passed by the state legislature become laws only after the signatures of the Governor. He can withhold his assent or can return a bill (other than a money bill) to the legislature for reconsideration. But if the bill is passed a second time, he cannot withhold his assent from that bill. Several legislative measures can be reserved by him for Presidential assent.

The Governor summons and prorogues the sessions of the state legislature. He can dissolve the state legislative assembly. He nominates 1/6 members of the Legislative Council from amongst persons having distinguished careers in the field of science, art, literature or social service, normally all these functions are performed by the Governor under the advice of the State Chief Minister.

When the state legislature is not in session, the Governor can issue ordinances. Any ordinance so issued by the Governor has the same force as the law of the legislature. It, however, ceases to operate after six weeks from the date on which the state legislature comes into session. It also ceases to operate when a resolution is passed by the state legislature disapproving the ordinance. The Governor issues ordinances only on the advice of the state Chief Minister and his Council of Ministers.

**Financial Powers:** A money bill can be introduced in the state legislature only with the prior permission of the Governor. He orders that the annual budget be placed before the state legislature. The contingency fund of the state is at his disposal and he can order expenditure

out of it to meet any unforeseen expenditure. In reality these powers are also exercised by him under the advice of the CM and his State Council of Ministers.

**Judicial Powers:** The Governor of the state has some judicial powers. He can influence the appointments, postings and promotions of the district judges and other judicial officials.

According to Article 161, The Governor can allow pardons, respites, rests or abatement of disciplines. He can likewise suspend, dispatch or drive the sentence of an individual indicted for an offence illegal.

The Governor is consulted by the President in the appointment of the Chief Justice to the High Court of that specific state.

### **Emergency Powers: Art.356**

**State Emergency/President's Rule:** Also known as a constitutional emergency, it can be proclaimed by the President on the following grounds:

- Failure of constitutional machinery in the states (article 356) or
- Failure to comply with or to give effect to directions given by the union.

**Miscellaneous provisions:** Governor acts as the first person to supervise the Auditor General's report on expenditure and income of the state. He is also an agent of the President to oversee the emergency situation and President rule in a particular state.

### **POSITION OF THE GOVERNOR:**

A review of the powers of the Governor brings out the view that he has got wide powers and is not a constitutional ruler. However, being the head of a state which has a parliamentary system, the Governor normally acts as a constitutional or nominal executive head the state. He carries out all his functions on the advice of the Chief Minister and his Council of Ministers.

**The Areas in which the Governor can act in his Discretion:** Despite being a nominal head, the Governor has some discretionary powers. These are exercised by him without the advice of the State Council of Ministers.

These are:

- (i) When no political party is having a clear majority in the State Legislative Assembly, the Governor can play an active and decisive role in the appointment of the Chief Minister.
- (ii) The Governor can use his discretion in dismissing a ministry when the party in power loses majority or is likely to lose majority in the state Legislative Assembly.
- (iii) The Governor can act in his discretion in ordering or recommending to the President for dissolution of the state assembly. The Governor can refuse to accept the advice of a Chief




Minister for dissolving the state legislative assembly in case he feels that an alternative state government can be formed.

(iv) The Governor depends upon his discretion in advising the President for an emergency in the state. He has the power to judge as to whether there has been a break-down of constitutional machinery in the state or not.

### **THE CHIEF MINISTER:**







According to Art. 167 the powers and functions of the Chief Minister are the following:

It is the duty of the Chief Minister (CM)

-  To communicate to the Governor of the state all decisions of the council of ministers relating to administration of the affairs of the state and proposals for legislation.
-  To furnish such information relating to the administration of the affairs of the state and proposals for legislation as the Governor may call for.
-  If the Governor so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

The above noted three functions of the Chief Minister do not describe the exact powers and functions. It is true that the CM of a state is not as powerful as PM. But he holds a very crucial position in the administration of a state. In fact, he is the key figure of the entire system of state administration.

### **Some of the very important roles are:**

-  It is the duty of the CM to give directions to all ministries and to coordinate among all the ministries.
-  In India planning is decentralized and there is a state planning body. This body discharges its duties under the direct guidance and advice of the Chief Minister.
-  The Governor appoints the ministers on the advice of the CM. He again distributes the portfolios among the ministers.
-  He has the power to reshuffle the council of ministers. That is, he can change the portfolios and drop ministers or add new minister.
-  A very important function of the CM is to communicate the decisions of the council of ministers to the Governor.
-  He presides over the meeting of the council of ministers and gives leadership to all major decisions. In other words, without his knowledge no major decision can be taken.

✚ The Chief Minister acts as the main instrument in all the major administrative decisions or change in the rules of general administration of the state. In this sense he may be regarded as the real executive of the state though constitutionally the Governor is the chief executive. But the nature and extent of the real executive depend upon the nature of the state government and the personality of the Chief Minister.

A powerful and imaginative Chief Minister has ample opportunities to do development and constructive work and take decisions on crucial issues.

All these make him the centre of enormous power and a real executive. The CM has another role he is to establish a direct and fruitful relationship with the Centre. A CM of strong personality manages to get a large share of funds from various heads of central finance department.

### **COUNCIL OF MINISTERS:**

Another part of state administration is the council of ministers. In Art 163(1) we find the following.

There shall be a council of ministers with the Chief Minister at the head to aid and advice the Governor in the exercise of his function, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.

The real fact is that the council of ministers constitutes the main part of the state administration since the ministers are elected by the people and are responsible to the legislature as well as to the electorate. The council of ministers is the policy making mechanism of the state and under its guidance the civil servants implement the policy.

The Chief Minister is the head of the state council of ministers. He is appointed by the Governor. In appointing a person as Chief Minister the Governor has no choice. The leader of the largest party in the lower house of the state legislature is invited by the Governor to be the Chief Minister. Though the state administration is conducted by the council of ministers, the Governor keeps an eye on the day-to-day administration of the state.

The Governors are generally top politicians of the ruling party at the Centre or retired bureaucrats of general administration or retired army officers. Viewed from this background the posts of the Governors are prize posts. In such situation the clash between the Governor and the council of ministers happens to be a reality. But under normal circumstances the clash between the Governor and the Chief Minister is not very common. When the clash of opinion

between the Governor and the Chief Minister comes to be a reality the state administration suffers.

Art. 166 states that all executive action of the government of the state shall be expressed in the name of Governor. In the administrative system of state, orders and other related matters shall be in the name of Governor and shall be authenticated by him. Though in practice the state administration is managed by the Chief Minister along with other ministers every aspect of administration shall be communicated by the Chief Minister to the Governor.

#### **STATE SECRETARIAT:**

A secretariat is the nerve centre of the state administration. There are several ministers in a state government and each minister is the head of a ministry. A minister may be in charge of several departments or ministries. However, he heads all departments or ministries. The minister is the political executive of a department and plays the important role in policy making affairs. But he is assisted by the head of the ministry who is an experienced bureaucrat.

A secretariat represents all the ministries. In public administration the secretariat is a complex term and means governmental administrative office. Each department or ministry is headed by a secretary and his most important function is to advise the minister in policy making affairs. In a secretariat there are all the departments or ministries and these combined forms the secretariat.

There is no fixed rule about the number of departments that will constitute a secretariat. The number of departments varies from state to state. Normally there are thirty to thirty-five departments in a secretariat.

The following are the departments that are normally found in almost all the Indian states:

- |                                 |                                |
|---------------------------------|--------------------------------|
| (1) General Administration      | (11) Planning and Development  |
| (2) Home                        | (12) Irrigation                |
| (3) Finance or Revenue          | (13) Information and Publicity |
| (4) Local Self-government       | (14) Co-operation              |
| (5) Land Reforms                | (15) Labour and Employment     |
| (6) Trade and Commerce          | (16) Excise Department         |
| (7) Food and Agriculture        | (17) Electricity and Power     |
| (8) Public Health Department    | (18) Economics and Statistics  |
| (9) Transport and Communication | (19) Social Welfare            |
| (10) Education                  | (20) Jail                      |

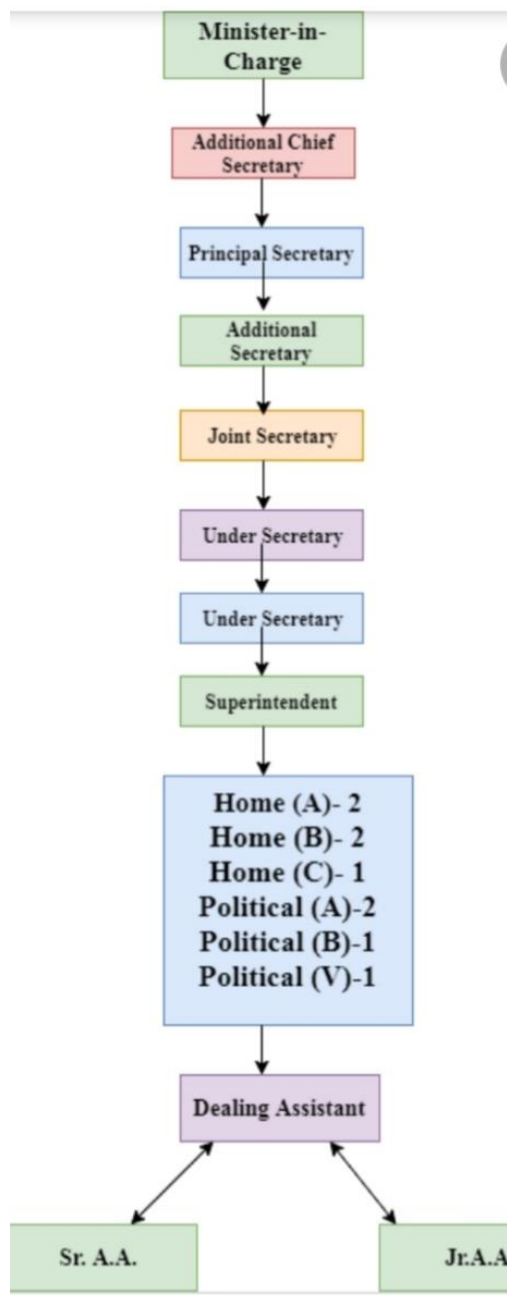
**Functions of Secretariat:**

- (1) The secretariat is the highest body of state administration. All decisions and policies of state administration are done by this body. Though the final decision is taken by the minister of the department or ministry the paperwork is done by the secretary.
- (2) All the correspondence works with the Central Government and other places are done by this body.
- (3) The secretariat is a body in which all the departments or ministries are represented. Naturally it is an important function of secretariat to coordinate all the ministries.
- (4) When the assembly is in session the secretariat prepares the questions raised by the members of the assembly.
- (5) Implementation of policies and to review the progress of implementation is regarded as function of the secretariat.
- (6) The secretariat also prepares the plan that is Five Year Plans and supplies data for the preparation of plans. It also sees how the plan has progressed.
- (7) Assembly makes laws but while implementing them minor changes may be required and that job is done by the secretariat. It is called delegated legislation.
- (8) The secretariat prepares the service rules to be followed by the employees.
- (9) There are various matters within the secretariat which require proper attention and treatment, such as inter department and intra department relation
- (10) The secretariat is entrusted with the responsibility of creating new posts and, if necessity arises, of abolishing old posts. In these respects the secretariat generally makes proposals and final decision is taken by the head of the department.
- (11) It is the duty of the secretariat to maintain correspondence with the secretariat of the Central Government and the secretariats of other constituent states.
- (12) For disaster management the secretariat takes quick action without waiting for the minister's approval. The secretariat does it on emergency basis.

**Financial functions of the secretariat:**

- (a) Preparation and scrutiny of the budget.
- (b) Allotment of funds for the development projects.
- (c) Funds are sanctioned for each department or ministry and that job is done by the secretariat.
- (d) For each state there is a Contingency Fund and it is the duty of the secretariat to sanction expenditure to be spent out of this Fund.

- (e) If any proposal for new expenditure is made, the secretariat scrutinises this proposal and sanctions fund for it.
- (f) The secretariat has power to sanction expenditure without the approval of minister.
- (g) Supervises the general expenditure of the state.



### CHIEF SECRETARY:

In the state administration the Chief Secretary is the most important person. Generally a very senior, experienced IAS officer is appointed to the post of Chief Secretary practically at the far end of service life. Sometimes Chief Secretary is a political appointment. It means that the seniority and experience criteria are not prioritised. If in the judgment of the Chief Minister a person happens to be efficient and able, that person is selected for this most crucial post.



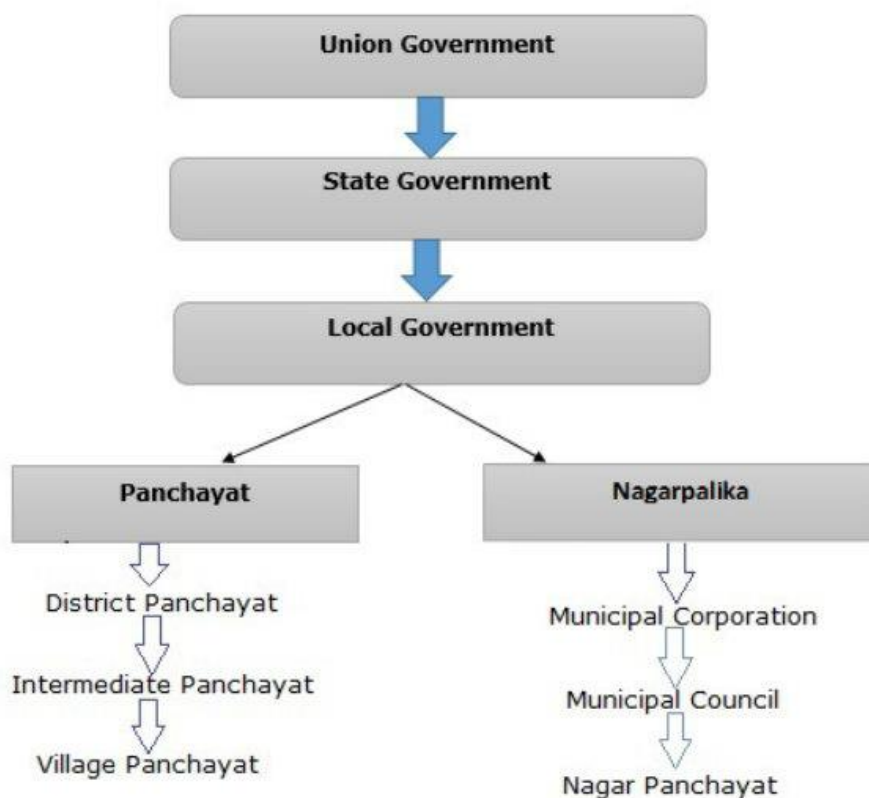
However, this does not always happen. The Chief Secretary is the secretary of the Chief Minister.

**Roles/Functions of Chief Secretary:**

1. The Chief Minister's Office (CMO) has been created and its main purpose is to aid and advise the CM in the discharge of his/her administrative functions.
2. Each ministry has its own staff or office. But the offices of all ministers work under the direction or supervision of the Chief Secretary.
3. All major decisions regarding the state administration are taken by him or behind such decisions there is the consent of the Chief Secretary.
4. Every department or ministry has a secretary, but the Chief Secretary is the head of all secretaries.
5. He is the coordinator of all ministries and advises the heads of all ministries when need arises.
6. On administrative affairs he takes all important decisions and informs the CM. In other words, he is the main or only link between the CM and all the ministries.
7. Chief Secretary is the principal secretary to the state administration and by virtue of this he is the spokesperson of the state administration.
8. The ministers are political or temporary heads of state administration. Between the going and coming of ministers there arises a gap in administration. In this period the Chief Secretary runs the whole administration of the state.
9. In a developing economy like India the public administration has a very important role to play.
10. It is the duty of the Chief Secretary to utilise the state administration for development purposes.

**UNIT-V****LOCAL ADMINISTRATION****Local Government****Introduction**

- Local government is the government of the village and district level. It is the government closest to the common people that involves in day-to-day life and attempt to resolve problems of ordinary citizens.
- Democracy is in fact about meaningful participation and also about accountability. Hence, strong and vibrant local governments ensure both active participation and purposeful accountability.
- The hierarchy of different levels of Governments (of India) is shown in the following image –

**Evolution of Local Government**

- In 1882, Lord Rippon, then Viceroy of India, took the initiative to form elected local government body.
- Following the Government of India Act 1919, village Panchayats were established in many provinces and the trend continued after the Government of India Act of 1935.

- When the Constitution was prepared, the subject of local government was assigned to the States and it was one of the provisions of the Directive Principles of State Policy.
- After the independence, a three-tier Panchayati Raj system of local government was recommended for the rural areas; some of the states including Gujarat and Maharashtra adopted the system of elected local bodies (1960).
- After 1987 a thorough review of the functioning of local government institutions was initiated and in 1989 the P. K. Thungon Committee recommended constitutional recognition to the local government bodies.
- Finally, in 1992, the 73rd and 74th Constitutional Amendments were passed by the Parliament.
- The 73rd Amendment is about the rural local governments, which are also known as Panchayati Raj Institutions (PRIs).
- The 74th Amendment made the provisions relating to the urban local government (also known as Nagarpalikas).

### **Panchayati Raj**

- Following the 73rd Amendment, all states now have a uniform **three tier Panchayati Raj structure** as –
  - **Gram Panchayat** – At the bottom level;
  - **Mandal** (also known as Block or Taluka) – Intermediary level; and
  - **Zilla Panchayat** – At the top level.
- A Gram Panchayat covers a village or group of villages.
- The intermediary level is the Mandal covers Block (i.e. a group of gram panchayat).
- The Zilla Panchayat covers the entire rural area of the District.
- All the three levels of Panchayati Raj Institutions are elected directly by the people for five years term.
- One-third of the positions in all panchayat institutions are reserved for the women.
- Twenty-nine subjects which were earlier in the State list are transferred to the Panchayati Raj Institutions.
- The 73rd Amendment was not made applicable to the areas inhabited by the Adivasi populations in many states of India; however, a separate provision was passed in 1996 for these areas.

- The State government is required to appoint a State Election Commissioner (independent of Election Commission of India) who would be responsible for conducting elections in the Panchayati Raj Institutions.
- The state government is required to appoint a State Finance Commission once in five years.

### **Municipality / Nagarpalika**

- The 74th Amendment dealt with urban local bodies (Nagarpalikas or Municipality).
- The Census of India defines an urban area as –
  - A minimum population of 5,000;
  - At least 75% of male working population engaged in non-agricultural occupations, and
  - A density of population is at least 400 persons per sq. km.
- As per the 2011 census (provisional data), about 31 percent of India's population lives in urban areas.
- Many provisions of 74th Amendment are similar to 73rd Amendment.
- The functions of Nagarpalika have been listed in the Twelfth Schedule of the Constitution.
- The Indian population has 16.2 percent Scheduled Castes (SC) and 8.2 per cent Scheduled Tribes (ST) and accordingly, the seats for both SC and ST are reserved in local government.

### **District Administration: Evolution and Role**

District as a basic unit of field administration has been in existence through the ages. It is surprising to know that it has not changed substantially, since the times of Mauryan Era to Mughals to British era. Historically the district, in some form or the other has been the most important unit of administration in the Indian sub-continent.

The British Parliament was the first legislature with respect of India in modern times, they created enactments and gave substance to the district head of administration, known variously as the Collector (in respect of revenue administration), the District Magistrate (in respect of administration of criminal justice) or the Deputy Commissioner (in respect of General Administration and special functions / powers under local tenancy laws).

Hence this system continued and since independence, the District in India is acting as the cutting edge of administration. The District administration is headed by the District Collector/Deputy Commissioner, drawn from IAS and he is responsible among others for the general control and direction of the police.

Until the 73rd and 74th Amendments to the Constitution, the governance structure of India was two-tiered comprising the Union Government and the State Governments. At the district level, apart from discharging the responsibilities cast by specific enactments, the Collectors performed such administrative tasks as were assigned to them by the State governments. After independence, the single greatest accretion to the responsibilities of the district administrator came through expansion of rural development programmes. As the number of activities, institutions and departments involved in rural development increased, the coordinating and synthesizing role of the Collector in the development efforts of the government assumed greater importance.

### **Prevailing Administrative Structure**

The overall administrative structure presently prevailing at the district and sub-district levels in the country consists of the following three components-

- a) Administration of regulatory functions under the leadership of the Collector and District Magistrate, such as law and order, land revenue / reforms, excise, registration, treasury, civil supplies and social welfare.
- b) District / Sub-district level offices of the line departments of the State Government and their agencies, such as PWD, irrigation, health, industries etc.
- c) Local bodies (Panchayati Raj Institutions and Municipal bodies) which, after the 73rd and 74th amendment of the Constitution, have become the third tier of government.

### **Role of the Collector in District Administration**

The post of District Collector has been the most important feature of field administration in India for the last two hundred years. Before Independence, when the economy was primarily agricultural, the Collector as head of the land revenue, administration also enjoying wide powers under criminal laws. He was considered as the ultimate guardian figure responsible for the well-being of residents in his jurisdiction - the representative of the British Empire, capable of doing anything and everything. In the post-Independence era, when the economy diversified, and the pace of industrialization and growth of tertiary activities picked up, other functionaries too gained in importance. But, even now, in most parts of the country, excepting metropolitan/mega cities, the Collector is the most recognized face of the administration; he is considered to be the principal representative of the government at the district level, who could be approached to solve virtually all problems ranging from land disputes, to scarcity of essential commodities, to inadequacy of relief in times of crisis, to community disputes and even to issues of family discords.

### **Functions of District Administration:**

**Law and order and magisterial matters:** The first group of functions relates to public safety and self-possession. Maintenance of Law and order is the joint responsibility of the Superintendent of Police, who heads the Police force in the district, and the District Magistrate. The Deputy Commissioner/ Collector of the District are also the District Magistrate. Though there is a separate department for the administration of jails, the district Magistrate exercises general supervision over the Jails in his district.

**Land Revenue:** The second group of functions relates to revenue administration. While the most important component of this group is land administration including maintenance of land records, it also includes the assessment and collection of land revenue and also collection of the other public dues which are collected as arrears of land revenue. The Deputy Commissioner is a designated Revenue officer in various laws governing the land to deal with disputes arising out of land records and management of public lands and properties. The other revenue officers, namely, the Tahsildars and the Deputy Tahsildars also perform functions of dealing with land disputes under the overall supervision and control of the Deputy Commissioner/collector.

**Development Activities:** These include Public Health, Education, Social Welfare, welfare of Backward Classes and communities. Each of these functions is looked after by separate department, headed by specialist officers in the district. The various special economic programmes like Jawahar Grama Samrudhi Yojana (JGSY), Swarnajayanthi Grama Swarozgar Yojana, etc. and the poor people's housing scheme Ashraya are implemented by the Zilla Panchayats in each district. The collector/ Deputy Commissioner do not get a direct role in these schemes. However, since these programmes call for an integrated effort by various field departments at the district level, Public Works Department and Minor Irrigation, Forest etc.,

### **Regulatory Functions:**

These include

- (i) control, regulation and distribution of Food and Civil supplies and essential commodities.
- (ii) Excise and Prohibition matters.
- (iii) All matters relating to Stamps and Registration, Societies registration Act, 1960, Registration of firms under the Indian Partnership Act, 1932.
- (iv) Matters relating to urban land (ceiling and regulation), vacant lands in urban areas.

**Elections and Citizenship Matters:** This relates to holding of elections of Parliament, State Legislature and Local Bodies. The collector/Deputy Commissioner is responsible for the

proper observance of process of elections from the registration of voters to the declaration of results of elections.

**Municipal Administration Matters:** The collector/DC is generally responsible for the supervision and proper functioning of the urban local bodies. The implementation of various developmental and anti-poverty measures for the urban poor is monitored by the Deputy Commissioner. The most important of these programmes are the Swarnajayanti Shahari Rozgar Yojana (SJSRY), Urban Ashraya (Housing), Tenth Finance Commission development grants and the Integrated Small and Medium Towns Development (IDSMT) Programmes.

**Emergency Relief:** In situations like floods, accidental fires, earthquakes and other natural calamities, the entire district administration is geared to meet the threat and the DC assumes charge to coordinate the activities of the various departments and takes proper steps to alleviate sufferings of the people.

**Land Acquisition matters:** Acquisition of land for public purposes like construction of development projects, industries etc. is carried out by the Land Acquisition Officers under the control of the Deputy Collector.

**Public Grievances:** The DC is the District Public Grievances officer, in consequence of which he maintains the overall responsibility to ensure proper functioning of all departments in the district.

### **PART IX-A: The Municipalities**

A municipality was added to the Constitution by the Constitution (Seventy-Fourth Amendment) Act, 1992, which was also known as the “Nagarpalika Act”. This allowed the members of a particular urban locality to come together and work towards solving the issues in their area and implementing plans for its development. These self-government bodies are known as Municipalities.

The Municipal system is not much different from the Panchayati system, having only a few changed aspects that help to cater to the different environment. Municipalities given in the provisions of Part IX-A of the Constitution (Article 243P to Article 243ZG).

#### **Definition**

The municipality has been defined in Article **243P** as simply an institution of self-government in an urban area.

#### **Constitution of Municipalities**

The Constitution, in Article **243Q** provides for the rules regarding the constitution of municipalities. According to it, three types of municipalities are to be created:



1. Nagar Panchayats, for transitioning areas (areas turning from rural to urban)
2. Municipal Councils, for smaller urban areas
3. Municipal Corporations, for larger urban areas

**Nagar Panchayats:** Also called Notified Area Committee, it is set up in an area that does not qualify completely as an urban area but which the government considers important. It is set up in areas having more than 11,000 but less than 25,000 people living. The members of a Nagar Panchayat are called ward members. They are headed by a Chairman.

**Municipal Councils:** Also called Nagar Palikas, they are established in areas having more than 1,00,000 but less than 10,00,000 people living. Its members are also called ward members, and they elect a President to head them. Apart from that, the State appoints a Chief Officer and other officers like health officer, education officer, etc. to manage the affairs of the municipal council.

**Municipal Corporations:** A Municipal Corporation is also called a Nagar Nigam or a Mahanagar Palika. It is the top tier municipality and enjoys the highest degree of autonomy. Municipal Corporations are established in urban areas having a population of more than 1 million. The members of a Municipal Corporation are called councillors. They are headed by a Mayor.

**Wards Committees:** For the purpose of conducting elections to the municipality, the area under its jurisdiction is divided into Wards. These Wards also have their own Committees, consisting of one or more wards within the area of all municipalities having a population of 3 lakh or more.

**Reservation of seats in Municipalities:** Special provisions have been made for the representation of marginalised communities in the urban local self-governments. This has been done to ensure that women, members of the downtrodden castes, etc. also get the opportunity to have their voices heard.

Article **243T** of the Indian Constitution gives the provisions for reservation of seats in the municipalities for certain communities. They have been briefly described below.

1. Seats should be reserved for members of Scheduled Castes and Scheduled Tribes in the municipality, in the same proportion which their population bears to the total population of the locality.
2. At least one third of the above mentioned seats should be reserved for women belonging to Scheduled Castes and Scheduled Tribes.
3. At least one third of the total seats in the municipality should be reserved for women (including the seats reserved under Clause 2).

4. The offices of the Chairpersons shall be reserved for Scheduled Castes, Scheduled Tribes and women as the Legislature decides.

**Duration of Municipalities:** The Constitution has specified the exact duration of operation of a municipality in Article **243U**. It states that every municipality shall continue to be in force for a period of 5 years unless it is dissolved earlier by any law.

**Disqualifications for Membership:** A person can be disqualified from the membership of the municipality in certain situations. As per Article **243V** of the Constitution, this can happen when the person has been disqualified from membership of the Legislature of the Union or the State because of any reason, or if he has been specifically disqualified from membership of the municipality by any law.

### **The main functions/Roles of a municipality:**

1. Construction of buildings and regulation of land use.
2. Managing the water supply.
3. Protecting natural resources and regulating their use.
4. Ensuring public health and proper sanitation.
5. Construction of schools in the locality.

### **Power to impose taxes and funds of the Municipalities**

A municipality needs funds and resources to perform its wide range of functions. There are certain methods laid-out in Article **243X** of the Constitution through which municipalities mobilise funds. The process is very similar to the one followed by panchayats.

The Constitution provides that the State can take decisions to:

1. Grant the requisite power to the municipality to levy taxes, tolls, and fees.
2. Make grants to the municipality, or create funds for it.

**Finance Commission:** The Constitution has provided for the creation of a Finance Commission for municipalities by the Governor under **Article 243Y**.

**Audit of Accounts of the Municipalities:** As per the Constitution of India (**Article 243Z**), State governments have the power to determine who will audit the accounts of municipalities and what procedure will be followed in their own states.

**Election to the Municipalities:** Elections to municipalities are conducted under the guidance and control of the State Election Commission, as given in Article **243ZA**. This means that election rules in a particular municipality depend on the policy of the government of the State in which it lies.

### **Municipal Council roles and responsibilities:**

The council is the governing body of the municipal corporation and the custodian of its powers, both legislative and administrative.

The *Municipal Government Act* (MGA) provides that councils can only exercise the powers of the municipal corporation in the proper form, either by bylaw or resolution.

### **Councillors**

Under the MGA, councillors have the duty to:

- Consider the welfare and interests of the municipality as a whole and, to bring to council's attention anything that would promote the welfare or interests of the municipality.
- Participate generally in developing and evaluating the policies and programs of the municipality.
- Participate in council meetings and council committee meetings and meetings of other bodies they are appointed to by the council.
- Obtain information about the operation or administration of the municipality from the chief administrative officer.
- Keep in confidence matters discussed in private at a council meeting until discussed at a meeting held in public.

### **Mayor /Chief Elected Official (CEO)**

The CEO can be a mayor. Mayor/Chief plays three roles: a member of Council, chief executive officer (CEO) of the Council, and community representative.

The Mayor/Chief does not make decisions alone. The CEO, in addition to performing a councillor's duties, must preside when attending a council meeting, unless a bylaw provides otherwise.

As a member of Council, the Mayor/Chief has the same responsibilities as other Councillors. As the CEO, chairs meetings, ensures that everyone has a chance to speak, signs official papers, works with Administration and ensures Council's work is done.

Represents the community to other levels of government, hosts special visitors, attends meetings outside the community and speaks on behalf of Council. The CEO must also perform any other duty imposed under the MGA or any other enactment. In practice, the CEO is also generally the main spokesperson for the municipality, unless that duty is delegated to another councillor.

The CEO of a city or town is elected by a vote of a municipality's electors, unless the council passes a bylaw requiring council to appoint the CEO from among the councillors.

**The CEO/ Mayor role:**

- Chairperson of council.
- Consensus seeker amongst members of council.
- Liaison with senior elected officials.
- Ex-officio member on various boards and committees.
- Key representative with regard to ceremonial responsibilities.
- Liaison with other levels of government.
- Advice with regard to policy development.

A deputy CEO will assume this role if the CEO is not available.

**Councillor's roles :**

- ❖ Attending, listening and actively participating in Council and Committee meetings;
- ❖ Being visible in the community, attending public events (sometimes just as an observer);
- ❖ Visiting people and being available to hear their concerns and discuss their issues;
- ❖ Having regular meetings with elders, social workers and others to get their points of view;
- ❖ Understanding the duties and obligations of your Community Council and how your decisions affect the community;
- ❖ Survey residents to find out what issues are important to them;
- ❖ Keep people informed, perhaps by printing and distributing a monthly newsletter, by speaking on the local TV's or by creating a community website.

**Chief Administrative Officer (CAO)**

Every council must establish, by bylaw, a position of CAO. The council may give the position an appropriate title, such as Town Manager or Administrator. The CAO is the administrative head of the municipality.

The CAO's responsibilities include:

- Ensuring that the municipality's policies and programs are implemented.
- Advising and informing the council on the operation of the municipality.
- Performing other duties assigned by the council.
- Ensuring appropriate staffing is in place.

Councillor's work with the CAO to keep informed on what the municipality is doing and will depend on the administration to provide information so they can make sound decisions.

### **Administration (Senior Administrative Officer/Band Manager)**

The Senior Administrative Officer/Band Manager is hired by the Community Council to manage the day-to-day affairs of the Community Government and oversee its employees.

Duties and responsibilities include:

- ❖ Provide professional advice and support to the Council;
- ❖ Follow Council direction;
- ❖ Manage, lead and direct Community Government staff;
- ❖ Maintain Community Government finances;
- ❖ Ensure all programs and services are effectively and efficiently delivered;
- ❖ Implement and monitor resolutions, bylaws and policies;
- ❖ Assist with the development and implementation of the strategic, business and operational plans; and
- ❖ Maintain internal and external relations.

### **Part- IX- Panchayats**

The first Panchayati system (called “Panchayati Raj”) came up in Nagaur city of Rajasthan in 1959 as per the recommendations of the Balwant Rai Committee. This Committee did far-reaching work in the area of rural democracy, which brought Balwant Rai the title of “Father of Panchayati Raj.” Gradually, this system was adopted by other states like Andhra Pradesh and Maharashtra.

However, the Constitution did not lay an obligation upon governments to constitute panchayats. Article 40 only provided a Directive Principle of State Policy that said the State should organise village panchayats and give them the necessary powers and authority to function, but this was not mandatory.

Over time, the Panchayati systems that had cropped up started going lax. A need was felt for a more well-established decentralized administration. The L.M. Singhvi Committee was appointed in 1986 to study the problems faced by panchayats. It gave several recommendations, including that panchayats should be constitutionally recognised, promoted and preserved. Thus, Article 40 was finally solidified in Part IX by the Constitution (Seventy-Third Amendment) Act, 1992.

Articles 243 and 243A- 243O under this Part, which talks about rural local self-government.

### **Gram Sabha**

The very basic unit of the Panchayati system is the Gram Sabha. It has been defined by Article 243(b) of the Constitution as the body of all the persons registered on the electoral rolls of a village.

The Gram Sabha acts as a forum where people can discuss matters of governance and development. Therefore, Gram Sabha is the primary and fundamental component of the local self-government system. However, the extent of its powers depends upon the policy of the state in which the village is located, as mentioned in Article 243A.

The membership of a Gram Sabha is restricted to persons above the age of 18 living in that village. This is done so that the best decisions, which are in line with the interests of the village, can be made.

### **Constitution of Panchayats**

Under Article 243(d) of the Indian Constitution, 'Panchayat' has been defined as an institution of self-government in rural areas.

Article 243B provides for the establishment of a three-tier Panchayati system:

1. At the village level i.e. Gram Panchayat
2. At the intermediate level i.e. Panchayat Samiti
3. At the district level i.e. Zila Parishad

Intermediate-level panchayats, however, only exist in states where the population exceeds twenty lakhs.

### **Gram Panchayat**

Gram Panchayat is the lowest level in the panchayat pyramid system. Each village is divided into even smaller units called wards, each of which selects a representative of its own. They are called Ward members. The Gram Sabha also elects the head of the Gram Panchayat, called the Sarpanch. Therefore, the Sarpanch and the ward members together make up the Gram Panchayat.

The main work of the Gram Panchayat is to take care of social issues, construct and maintain schools, roads and drainage facilities, etc., and to levy and collect local taxes. The Gram Panchayat is accountable to the general body of voters in the village.

### **Panchayat Samiti**

The Panchayat Samiti is the next level in the hierarchy. It oversees the working of the Gram Panchayats of all the villages located in the block under its jurisdiction.

The Panchayat Samiti is headed by the Pradhan/MPP. He or she is elected by a group consisting of all the members of the Panchayat Samiti as well as all the ward members/Panchs of the Gram Panchayats coming under it.

### **Zila Parishad**

Also known as District Panchayat, this is the highest level of panchayat in the hierarchy of rural self-government. It oversees the working of the Panchayat Samitis of all the blocks in

the district of its jurisdiction, as well as all the Gram Panchayats under them. Moreover, it controls the distribution of funds among all the Gram Panchayats. It is responsible for making developmental plans at the district level. The Zila Parishad is headed by the Chairman. It also has a Chief Executive Officer as a member, who is elected by the State government.

### **Disqualifications for Membership**

A person can be disqualified from the membership of the panchayat in certain situations. As per Article 243F of the Constitution, this can happen when the person has been disqualified from membership of the Legislature of the Union or the State because of any reason, or if he has been specifically disqualified from membership of the panchayat by any law.

### **Duration of Panchayats:**

The Constitution has specified the exact duration of operation of a panchayat in Article 243E. It states that every panchayat shall continue to be in force for a period of 5 years unless it is dissolved earlier by any law. It also says that election to a panchayat should be completed before its expiry or 6 months before its dissolution.

### **Powers, Authority and Responsibility of Panchayats**

Panchayats have the power to prepare the plans and schemes for economic development and promotion of social justice in the village. They are responsible for preparing practical and well-thought-out plans which will enable the furtherance of the interests of the villagers. As per Article 243G, it is the State which determines the specific scope and extent of the powers of the panchayat in the above matters.

Some major functions of a panchayat are as follows:

1. Providing necessary facilities like sanitation and medical assistance, schools, irrigation, roads, drinking water, etc.
2. Making annual developmental plans for the area and preparing schemes for more scientific agriculture, employment generation, etc.
3. Making the annual budget and managing the finances of the area.
4. Implementing and coordinating schemes launched by the Central and State governments, like the Public Distribution System.

### **Powers to impose Taxes and Funds of Panchayats**

There are a lot of functions that a panchayat has to perform. And as we know, nothing in this world is free; to do anything, we need monetary resources. All of us pay taxes to the government on our incomes and expenditures. This acts as a source of revenue for the government. Some of these funds are appropriated to the panchayats. Also, in the same way



as the government, panchayats too collect their own taxes, tolls, and fees from the people to keep their gears running smoothly.

Article 243H mentions that the State can take decisions to:

1. Grant the requisite power to the panchayat to levy taxes, tolls, and fees.
2. Assign to the panchayat some of the money collected by it in similar ways.
3. Make grants to the panchayat, or create funds for it.

### **Finance Commission**

To make the above-discussed process of mobilisation of funds for the panchayats easier, the Constitution has provided for the creation of a Finance Commission by the Governor under Article 243I.

### **Audit of Accounts of Panchayats**

As per the Constitution of India (Article 243J), State governments have the power to determine who will audit the accounts of panchayats and what procedure will be followed in their own states.

### **Election to the Panchayats**

The provision for an election to panchayats has been enshrined in Article 243K of the Indian Constitution. It says that the Panchayat elections are to be conducted and overseen by the State Election Commissions.

### **Continuance of existing laws and Panchayats: Article 243-N**

Even before the enactment of the 73rd Amendment in 1992, there existed certain laws and provisions relating to Panchayats in various states. Article 243N, therefore, provides that any such laws and provisions would continue to be in force even if they were inconsistent with Part IX of the Constitution unless they were specifically repealed or amended by a competent Legislature or any other competent authority.

### **CEO Zilla Panchayat/ Zilla Parishad:**

The chief executive officer (CEO), who is an IAS or a state civil service officer, heads the administrative machinery of the Zila Parishad. He may also be district magistrate in some states. The CEO supervises the divisions of the parishad and executes its development schemes.

### **Roles /Functions of the Chief Executive Officer (CEO):**

The Chief Executive Officer shall perform the following functions:

- Exercise all the power specially, imposed or conferred upon him by or under the Act or under any other law for the time being in force.
- Control the officers and official Zilla Panchayat.

- Supervise and control the execution of all works of the Zilla Panchayat.
- Take necessary measures for the speedy execution of all works and developmental schemes of the Zilla Panchayat.
- Have custody of all papers and documents connected with the proceedings of the meetings of the Zilla Panchayat and its committees.
- Draw and disburse monies out of the Zilla Panchayat Fund.
- Exercise such other powers and discharge such other functions as may be prescribed.
- The Chief Executive Officer shall attend meeting of the Zilla Panchayat and shall have right to attend the meeting of any committee thereof and to take part in the discussion but shall not have right to move any resolution or to vote.

### **Block Level:**

The Block Level, the entire State has been divided into Blocks in order to provide development to the rural villages/areas and bring the administration closer to the people. Each Development Block is headed by an Officer called the Block Development Officer (BDO) who is assisted by a team of Officers in the field of Agriculture, A.H. Veterinary and Engineering. They undertake survey work; prepare the scheme with plans and estimates and so on for approval and sanction. Each Block is divided into Circles in order to achieve success in the sphere development at the grass root level. Each circle is under the charge of a Gram Sevak.

### **Organisation structure of Block level:**

The total number of posts in all the Block Offices is as follows:

1	Block Development Officer
2	Accountants
3	U.D.A's
4	UDA-Cashier
5	L.D.A.-Cashier
6	L.D.A.-Typists
7	Sub-Engineers
8	Section Assistants
9	Sr. Gram Sevaks
10	Gram Sevaks
11	Gram Sevikas
12	Drivers

13	Peons to BDOs
14	Office peons
15	Chowkidar

**Role and Function:** At the Block Level, the Block Development Officer is the Head of the Block Office. He is assisted by a team of officers, technical staff and ministerial staffs who are responsible for the proper and successful execution of various development works entrusted to the Department. For execution of the schemes the Block Development Officers is also responsible for securing peoples participation and maintaining of public enthusiasm in the different programme taken by the Blocks.

### **Schemes**

The Community and Rural Development Department implements different programmes and schemes for economic and social development of the people in rural areas of the State. The aims and objectives of the programmes and schemes are alleviation of poverty, generation of employment, creation of durable community, social and economic assets and providing social security for the rural people and general development to uplift the economic condition of people living in rural areas.

#### **Centrally Sponsored Schemes:**

##### **Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA)**

The Government of India passed the National Rural Employment Guarantee Act, 2005 in September 2005. The Act gives legal guarantee of a hundred days of wage employment in a financial year for a rural household whose adult members are willing to do unskilled manual work. Implementation of the Act calls for the formulation of National Rural Employment Guarantee Schemes by the State Government.

##### **Indira Awaas Yojana (IAY) / Pradhan Mantri Awaas Yojana – Gramin (PMAY-G)**

It is a scheme aimed at providing low cost houses to SC/ST and freed bonded labourers living below poverty line, free of cost. Funds for the programme are shared by the Central and the State Govt. in the ratio of 90:10. The scheme has been restructured to Pradhan Mantri Awaas Yojana – Gramin (PMAY-G) which aims at providing pucca houses to all houseless households and households living in kutcha and dilapidated houses in rural areas.

##### **National Rural Livelihood Mission (NRLM)**

N.R.L.M. is a scheme launched by the Government of India in 2011. The mission of the scheme is to reduce poverty by building strong institutions of the poor particularly organising women into Self Help Groups (SHGs) so as to enable the poor households to access gainful

self-employment and skilled wage employment opportunities to improve their livelihoods on a sustainable basis.

**Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY)**

DDU-GKY is a part of National Rural Livelihood Mission (N.R.L.M.). It aims to skill rural youths who are poor and provide them with jobs having regular monthly wages at or above the minimum wage. It is one of the initiatives of the Government of India that seeks to promote rural livelihoods. As a part of the Skill India campaign, it plays an instrumental role in supporting the social and economic programs of the government like the Make in India, Digital India, Smart Cities and Start-Up India, Stand-Up India campaigns.

**National Social Assistance Programme (NSAP)**

The National Social Assistance Programme (NSAP) was launched by the Government of India from 15th August 1995. It has four components, viz: Indira Gandhi National Old Age Pension Scheme (IGNOAPS), Indira Gandhi National Widows Pension Scheme (IGNWPS), Indira Gandhi National Disability Pension Scheme (IGNDPS) and National Family Benefit Scheme (NFBS).

**Indira Gandhi National Old Age Pension Scheme (IGNOAPS):** The Scheme provides financial assistance to the BPL persons attaining the age of 60 years or above, @ Rs.500/- per month per beneficiary and for those who have attained the age of 80 years and above @ Rs. 550/- per month per beneficiary.

**Indira Gandhi National Widows Pension Scheme (IGNWPS):**

Under Indira Gandhi National Widow Pension Scheme (IGNWPS) beneficiary should be a BPL widow between 40-79 years of age and the ceiling for assistance is Rs.500 per month per beneficiary.

**Indira Gandhi National Disability Pension Scheme (IGNDPS):**

Under Indira Gandhi National Disability Pension Scheme (IGNDPS) beneficiary should be BPL with severe or multiple disabilities between the age of 18-79 years and the ceiling for assistance is Rs.500 per month per beneficiary.

**National Family Benefit Scheme (NFBS):**

The scheme provides a onetime assistance for extending financial assistance to below poverty line families on the death of a primary bread winner between the age of 18-59 years for Rs.20,000/-.

**State Sector Schemes**

**Special Rural Works Programme (SRWP):** The programme envisages active involvement of village community in the process of development right from the grass root level up to the

implementing stages which is in consonance with the policy programme of the Government. The schemes are of general in nature and are selected by the members of the Legislative Assembly (MLA) and implemented through the local durbars of villages.

### **Chief Minister's Special Rural Development Fund (CMSRDF)**

The primary objective of the programme is to generate wage employment and creation of socially and economically useful public assets by involving people's participation at the grass root level. The schemes undertaken in the programme are varied in nature and are selected by the Members of the Legislative Assembly (MLA) and NGOs and are implemented through local durbars and beneficiaries organization under the supervision of respective Deputy Commissioners of the District.







### **CONCEPT OF VILLAGE PANCHAYAT:**

It is the oldest system of local government in the Indian subcontinent. The word "panchayat" literally means "assembly" (ayat) of five (panch) wise and respected elders chosen and accepted by the local community. Traditionally, these assemblies settled disputes between individuals and villages.

Village Panchayats are controlled and supervised by ZillaParishads, PanchayatSamitis and their officers. The state government also has direct control over Panchayats through the Collector of the district. District Village Panchayat officers work under ZillaParishads to supervise and control the village Panchayats, and are appointed by the state governments.

Government control over this institution has seldom proved to be effective and the poor masses at the grassroots level are yet to get benefit from the existing system of Panchayati Raj. In view of these shortcomings, Part IX, consisting of Article 243 was inserted by the Constitution (73rd Amendment) Act, 1992.

### **Powers and Functions of the Sarpanch:**

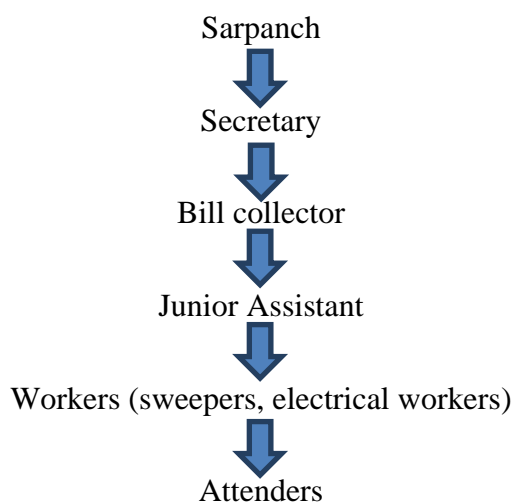
-  To assemble and preside over the meetings of the Gram Panchayat.
-  To conduct and regulate and be responsible for the proper maintenance of the records of the proceedings of the meetings.
-  To execute documents relating to controls on behalf of the Gram Shasan.
-  To be responsible for the proper custody of all records and documents, all valuable securities and assets belonging to the Gram panchayat.
-  To be responsible for the proper working of the Gram panchayat as required by or under the Act.
-  To exercise supervision and control over the acts and proceedings of all officers and employees of the Gram panchayat.

- ✚ To have authority to enter into correspondence on behalf of Gram panchayat.
- ✚ To order the preparation of all statements and reports.
- ✚ To exercise such other powers, discharge such other duties and perform such other functions as may be conferred or imposed on or assigned to him.

**Power of Gram Panchayat Members:**

- ❖ To supervise during office hours, the records of the Gram Panchayat after giving due notice to the Sarpanch.
- ❖ To move resolution or question on any office bearer on matters connected with the administration of the Gram Panchayat.
- ❖ To exercise inspection over all works undertaken by the Gram Panchayat.
- ❖ To supervise all institutions working under the direction, management and control of the Gram panchayat.
- ❖ To bring to the notice of the Sarpanch the irregularities if any, noticed during such inspection.

**Organisation Structure of Village Administration/ Gram Panchayat:**



**Functions of Gram Panchayat:**

There are a number of functions performed by Gram Panchayats. These functions are divided into two categories, namely, the obligatory functions and the optional functions.

**Obligatory or the Compulsory Functions:**

- Construction, maintenance and cleaning of the drainage system and provision of sanitation in the village by the removal of filth and clearance of marshy areas.
- Supply of drinking water to the villages.

- Adoption of preventive measures against epidemics and other dangerous diseases.
- Preparation of census records of men and animals.
- Management of Panchayat properties as assets.
- Spread of primary education and its management.
- Control of Markets, ferries, fairs, Ghats and other public places.
- Adoption and encouragement of improved methods of cultivation.
- It has to perform such other functions which are given to the Gram panchayat on a compulsory basis.

**Optional Functions:** In addition to the compulsory functions, each Gram Panchayat is also required to perform certain optional functions for the development of the rural people. These functions are given below:

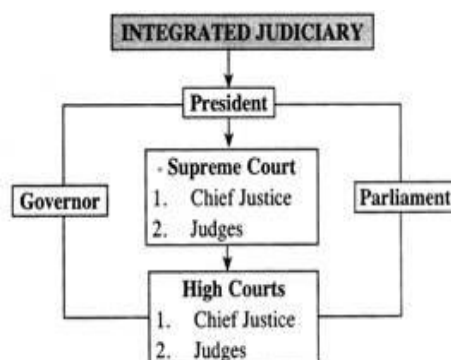
- ❖ Development and maintenance of village forests.
- ❖ Construction, management and control of slaughter houses.
- ❖ Scarcity relief measures.
- ❖ Organization of the Fire services and protection of life and property in case of fire.
- ❖ Maternity and child welfare and establishment of centres of the purpose.
- ❖ Establishment and maintenance of works for providing employment in a time of scarcity.
- ❖ Organization, management and promotion of cottage industries.
- ❖ Construction and maintenance of Dharmasalas and Rest houses.
- ❖ Provision of adult education, the establishment of primary schools with the prior approval of the Panchayat Samiti.
- ❖ To keep the records about the unemployed persons.



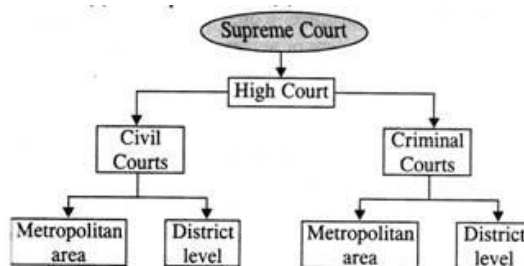
## UNIT-VI

## Union Judiciary

## Union Judiciary



## Supreme Court (Articles 124-147)



- ✚ The Supreme Court of India was inaugurated on January 28, 1950. It succeeded the Federal Court of India, established under the Government of India Act of 1935.
- ✚ Article 124 to 147 in part V of the Constitution deal with Organisation, independence, jurisdiction, powers, and procedures and so on of the Supreme Court. The Parliament is also authorized to regulate them.
- ✚ Supreme Court is the final interpreter and guardian of our Constitution. It is also the guardian of Fundamental rights of the people.
- ✚ It decides the disputes between Centre and States regarding encroachment of power, thus maintains the supremacy of the Constitution.
- ✚ It is the highest court of appeal in India.
- ✚ Originally the total number of judges was 7, but in 1977, their number was increased to 18. In 1986, it was further raised to 26 (including CJI). Presently there are 31 Judges in Supreme Court.
- ✚ Constitution does not provide for minimum no. of judges who will constitute a bench for hearing cases.

## Appointment and Removal of Judges

- Qualifications to be appointed as a judge of Supreme Court:
  - ❖ He must be a citizen of India.
  - ❖ He must either be a distinguished jurist, or one who has been a High Court judge for at least 5 years or an advocate of a High Court (or 2 or more such courts in succession) for at least 10 years (Article 124).
  - ❖ No minimum age is fixed for the appointment of a judge.
  - ❖ The Chief Justice of India is appointed by the President. In this matter, the President shall consult such judges of the Supreme Court and the high courts as he may deem necessary. A 9 judge bench of the SC has laid down that the senior most judge of Supreme Court should be appointed as Chief Justice of India.
  - ❖ In the appointment of other judges, the President shall always consult the Chief Justice of India. He 'may' consult other judges of SC and high courts as he may deem necessary Art 124(2)].
  - ❖ Power of appointment is exercised by the President on the advice of Council of Ministers.
  - ❖ There is no fixed period of office for Supreme Court judges. Once appointed, they hold office till the age of 65 years. He can quit office earlier by submitting his resignation to the President.
  - ❖ He can be removed by an order of President only on the grounds of proved misbehavior or incapacity. The order of President in this regard can only be passed after it has been addressed to both houses of parliament in the same session, by special majority (majority of the membership of house and majority of not less than 2/3 of members of that house present and voting). [Article 124 (4)].
  - ❖ Salaries of Judges are determined by the Parliament by law. These cannot be varied to their disadvantage during their term (except during financial emergency). Their salaries and expenses are charged on the Consolidated Fund of India. Salary of Chief Justice – Rs. 1,00,000/- month, Salary of Judges – Rs. 90,000/month Seat of the Supreme Court is in New Delhi. However it can be shifted elsewhere in India or more benches of SC can be established in India by Chief Justice of India in consultation with the President.
  - ❖ According to Article 129, Supreme Court is a "Court of Record". It means: Court records are admitted to be of evidentiary value.
  - ❖ It can punish for contempt of the court. Contempt is of 2 types: Criminal and Civil.

- ❖ Judges can be liable for the contempt of their own court.

### **Ad-hoc and Acting Judges:**

Article 127 says that if there is no Quorum of the Supreme Court Judges to hold or continue any session of the court, the Chief Justice of India (CJI), with the previous consent of the President and in consultation with the Chief Justice of the High Court concerned, can request in writing a Judge of the High Court, who is qualified to be a Judge of the Supreme Court, to function as an ad-hoc Judge of the Supreme Court.

While so attending as the Judge of the Supreme Court, he shall have all the Jurisdiction, powers and privileges and shall discharge the duties of a Judge of the Supreme Court.

### **Appointment of acting Chief Justice**

When the office of Chief Justice of India is vacant or when the Chief Justice is by reason of absence or otherwise unable to perform the duties of his office, the duties of the office shall be performed by such one of the other judges of the court as the President may appoint for the purpose.

### **Appellate Jurisdiction**

Appeal lies with the Supreme Court against the High Courts in the following 4 categories of cases:

- (a) Constitutional matters (civil, criminal or others) - Article 132
- (b) Civil matters (except Constitutional) - Article 133
- (c) Criminal matter (except Constitutional) - Article 135
- (d) Special leave to appeal - Article 136

Special leave to appeal is issued by Supreme Court in discretion. It cannot be issued in case of judgment passed by a court or tribunal of armed forces.

### **State Judiciary High Court**

- **Article 214 provides that there shall be a High Court for each state.** However under Article 231 (1) Parliament can establish by law, a common High Court for two or more States or for two or more States and a UT. **There are 24 High Courts in India.** Out of them three are common High Courts.
- Calcutta High Court, Madras High Court, Bombay High Court and Allahabad High Court are the oldest four High Courts in India. Among the four; the Calcutta High Court is the oldest, established on 2nd July 1862.
- Parliament may by law constitute a High Court for UT or declare any court in any such UT to be a High Court (Article 241).

- **Guwahati High Court** is the largest High Court in India; its territorial jurisdiction extends to seven states of the North East.
- Kolkata High Court has territorial jurisdiction over Andaman and Nicobar.
- Delhi has a separate high court but the other UTs come under the jurisdiction of various High Courts.

### **Appointment of Judges of High Court**

- Article 217 provides that every judge of a high court shall be appointed by the President.
- President appoints Chief Justice of High Court after consultation with Chief Justice of India and the Governor of the state concerned. In case of appointment of other judges of the High Court he may consult the Chief Justice of High Court concerned.
- The strength of the judges of the High Courts is not the same
- Further in case of transfer of High Court judges, in addition to the collegium of 4 judges of Supreme Court, the Chief Justice of India is required to consult Chief Justice of both the High Courts (one from where the judge is being transferred and the other, receiving him).
- Article 222 empowers the President after consultation with Chief Justice of India to transfer a judge from one High Court to another High Court.

### **Qualifications of a Judge of High Court**

1. Citizen of India,
2. Have held a judicial office for at least 10 years or
3. Have been an advocate of one High Court or two or more High Courts in succession for at least 10 years.

### **Term of Ad-hoc Judge**

- Until he attains the age of 62 years.
- He may resign by writing to the President.
- He may be removed by the President on the grounds of proved misbehaviour or incapacity on an address by both houses of parliament supported by the vote of 2/3rd of members present and voting in each house.
- Thus a judge of the HC can be removed in the same way as a judge of SC.

### **Emoluments**

- Besides other facilities. Chief Justice and other Judges of High Court get a salary of Rs. 90,000/- and Rs. 80,000/- per month, respectively.

- The salaries and allowances of the judges are charged on the Consolidated Fund of the State. These cannot be varied by the parliament to their disadvantage after their appointment (except under financial emergency). The pensions of the judges are charged on the Consolidated Fund of India.
- After retirement, a permanent judge of HC cannot plead or act in a court of India except SC or HC other than the one in which he has held office.

### **Courts under High Court**

- District Courts of India
- District Munsiff Court
- Courts of Judicial Magistrate of First Class
- Courts of Judicial Magistrate of Second Class

### **Subordinate Courts (Part VI, Articles 233 to 237)**

Under the High Court there are three types of courts in the districts. They are the Civil Courts, the Criminal Courts and the Revenue Courts. The highest Civil Court in a district is that of the district judge. They have the power to try civil cases and to hear appeals. They have additional civil judges to help them. The less important cases are decided by sub-judges and munsifs.

The highest District Court to try criminal cases is that of the Sessions Judge. The criminal cases are heard by the Magistrates too. The district judge also acts as the Sessions Judge in a district. Appeal cases against the lower courts are heard by the District Courts and appeals against the decisions taken by the District Court can be made to the State High Court.

**Appointment of District Judges:** The appointment, posting and promotion of a District Judge are done under the Governor of the State in consultation with the High Court. The necessary qualifications for a person to be appointed as a District Judge are as follows:

- Article 233 strictly says that a person to be appointed as District Judge must not be in the service of the Central or the State Government.
- He should have been an advocate or a pleader for 7 years.
- He should be recommended by the High Court for appointment as a District Judge.

**Other Local Courts:** In addition to the three types of courts mentioned above, there are the Panchayati Adalats or Nyaya Panchayats which are also under the District Judge in some states. They are established to try small cases of all kinds. Under this system the cases can be decided fast and need not involve much expenditure. The Nyaya Panchayats function in rural areas a similar concept introduced in some urban area this is called the 'Lok Adalat'.

**Mobile Courts:** Mobile Court means a court set-up in a vehicle, which can move from one place to another, according to a well-prepaid plan and schedule. Mobile Courts will be of great relief to the rural people. It would create greater awareness about the judicial system among rural masses; cut costs for them and render justice at their doorstep. These courts should see to it that hearings are not unnecessarily postponed.

The Mobile Court is equipped to receive complaints, civil and criminal applications, grant bail and remand accused to custody, issue summons, receive police reports, record evidence, pronounce and execute decrees and judgements, pass sentences and can send convicts to prison. It also delivers certified copies of its orders and judgements. **The Country's first mobile court was launched at Mewat district in Haryana.**

**Lok Adalat:** It is a system of alternative dispute resolution developed in India. It roughly means People's court. They are governed by the Legal Services Authorities Act of 1987. The Award of the Lok Adalat is binding upon all the parties. Lok Adalats are given certain powers of the Civil Courts. The Lok Adalats have wide jurisdiction that means any matter falling within jurisdiction of Civil, Criminal, Revenue Courts or Tribunals are dealt by them.

Lok Adalat accepts the cases which could be settled by conciliation and in which, compromise was pending in the Regular Courts within their jurisdiction. The first Lok Adalat was held on March 14, 1982 at Junagarh in Gujarat.

**Alternative Dispute Resolution (ADR):** It encompasses arrangement of means to resolve conflict without formal litigation. It seeks to reduce cost and delay. ADR has the following techniques:

- **Conciliation** is an informal process designed to create an environment where negotiations can take place. If the parties fail to reach an agreement, the case is referred to mediation.
- **Mediation** is a voluntary and confidential process where a neutral third party assists negotiations. The parties are responsible for reaching an agreement and the mediator cannot impose settlement. If the mediation fails to reach agreement, the case is referred to arbitration.
- **Arbitration** is a form of private adjudication where a mutually acceptable third party hears arguments from either side in a dispute and renders a judgement. The judgement known as an Award is confidential and binding.

**Writ Jurisdiction:** Article 226 of the Constitution empowers High Court to issue writs including habeas corpus, mandamus, certiorari, prohibition and quo-warranto for enforcement of the fundamental rights of the citizens and for any other purpose.

The phrase 'for other purpose' refers to the enforcement of an ordinary legal right. The High Court can issue writs to any person, authority and government not only within its territorial jurisdiction but also outside its territorial jurisdiction if the cause of action arises within its territorial jurisdiction.

The writ jurisdiction of the High Court (under Article 226) is not exclusive but concurrent with the writ jurisdiction of the Supreme Court (under Article 32). It means, when the fundamental rights of a citizen are violated, the aggrieved party has the option of moving either the High Court or the Supreme Court directly. However, the writ jurisdiction of the High Court is wider than that of the Supreme Court. This is because, the Supreme Court can issue writs only for the enforcement of fundamental rights and not for any other purpose, that is, it does not extend to a case where the breach of an ordinary legal right is alleged."

### **Public Interest litigation (PIL):**

In principle, all citizens of India can access the courts in the country. But in reality access to courts has always been difficult for a vast majority of the Poor in India, as legal procedures involve a lot of money and paperwork as well as take up a lot of time. In response to this, the Supreme Court in the early 1980s devised a mechanism of PIL.

Through PIL, the judiciary has also shown readiness to take into consideration rights of those sections who cannot easily approach the courts. For this purpose, the judiciary allowed public spirited citizens, social organisations and lawyers to file petitions on behalf of the needy and the deprived. Justice Krishna Iyer and Justice Bhagwati were champions of the concept of PIL in India.